

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

3 UNITED SERVICES AUTOMOBILE ) (  
ASSOCIATION  
4 ) ( CIVIL ACTION NO.  
5 VS. ) ( 2:18-CV-366-JRG  
6 ) ( MARSHALL, TEXAS  
JANUARY 9, 2020  
7 WELLS FARGO BANK, N.A. ) ( 8:30 A.M.

8  
9 TRANSCRIPT OF JURY TRIAL

10 MORNING SESSION

11 BEFORE THE HONORABLE CHIEF JUDGE RODNEY GILSTRAP,  
12 UNITED STATES DISTRICT JUDGE

13 APPEARANCES:

14  
15 FOR THE PLAINTIFF:

16 JASON SHEASBY  
17 ANTHONY ROWLES  
LISA GLASSER  
18 IRELL & MANELLA  
1800 Avenue of the Stars  
19 Suite 900  
Los Angeles, CA 90067-4276  
20

21 ROBERT CHRISTOPHER BUNT  
22 PARKER, BUNT & AINSWORTH, PC  
100 East Ferguson  
23 Suite 418  
Tyler, TX 75702  
24  
25

1 FOR THE DEFENDANT:

2  
3 THOMAS M. MELSHEIMER  
4 M. BRETT JOHNSON  
5 MICHAEL A. BITTNER  
6 J. TRAVIS UNDERWOOD  
7 WINSTON & STRAWN LLP  
8 2121 North Pearl Street  
9 Suite 900  
10 Dallas, TX 75201

11 E. DANIELLE T. WILLIAMS  
12 WINSTON & STRAWN LLP  
13 300 South Tyron Street  
14 16th Floor  
15 Charlotte, NC 28202

16 MATTHEW R. MCCULLOUGH  
17 WINSTON & STRAWN LLP  
18 275 Middlefield Road  
19 Suite 205  
20 Menlo Park, CA 94025

21 JACK WESLEY HILL  
22 WARD, SMITH & HILL, PLLC  
23 P.O. Box 1231  
24 1507 Bill Owens Parkway  
25 Longview, TX 75606

18 COURT REPORTER: Shelly Holmes, CSR, TCRR  
19 Official Court Reporter  
20 United States District Court  
21 Eastern District of Texas  
22 Marshall Division  
23 100 E. Houston  
24 Marshall, Texas 75670  
25 (903) 923-7464

23 (Proceedings recorded by mechanical stenography, transcript  
24 produced on a CAT system.)  
25

## P R O C E E D I N G S

(Jury out.)

COURT SECURITY OFFICER: All rise.

THE COURT: Be seated, please.

Are the parties prepared to read into the record those items from the list of pre-admitted exhibits used during yesterday's portion of the trial?

MR. BUNT: Yes, Your Honor, we are.

THE COURT: Please proceed.

MR. BUNT: Your Honor, the following Plaintiff's Exhibits came in during the trial yesterday: 13, 22, 23, 28, 427, 429, 1182, 1265, and 1266.

THE COURT: Is there any objection to that rendition by the Defendant?

MR. UNDERWOOD: No objection, Your Honor.

THE COURT: Do you have a similar rendition to offer, Mr. Underwood?

MR. UNDERWOOD: We do. The following Defendant's Exhibits were used yesterday, DTX-5, DTX-38, DTX-223, DTX-230, and DTX-267.

THE COURT: All right. Any objection, Mr. Bunt?

MR. BUNT: No, Your Honor.

THE COURT: All right. Counsel, thank you.

Mr. Saffici, if you're present, please return to the witness stand, sir, and I remind you you remain under

08:31:33 1 oath.

08:31:34 2 Counsel, do we have anything else we need to take  
08:31:37 3 up before we proceed with the remaining cross-examination  
08:31:39 4 of this witness?

08:31:40 5 MR. SHEASBY: Nothing for Plaintiffs, Your Honor.

08:31:41 6 MR. JOHNSON: Nothing for Defendants, Your Honor.

08:31:43 7 THE COURT: All right. You may go to the podium,  
08:31:46 8 Mr. Sheasby.

08:31:46 9 MR. SHEASBY: Thank you, Your Honor.

08:31:47 10 THE COURT: Mr. Johnston, would you bring in the  
08:31:49 11 jury, please?

08:32:07 12 COURT SECURITY OFFICER: All rise.

08:32:08 13 (Jury in.)

08:32:08 14 THE COURT: Good morning, ladies and gentlemen.  
08:32:18 15 Welcome back. Please have a seat.

08:32:19 16 It's 8:32. I'm doing better.

08:32:25 17 All right. We'll continue with the  
08:32:26 18 cross-examination of Mr. William Saffici by the Plaintiff.

08:32:33 19 Mr. Sheasby, you may continue.

08:32:36 20 MR. SHEASBY: Mr. Huynh, can we have PX-1187,  
08:32:42 21 Page 22?

08:32:42 22 WILLIAM SAFFICI, DEFENDANT'S WITNESS, PREVIOUSLY SWORN

08:32:42 23 CROSS-EXAMINATION CONTINUED

08:32:43 24 BY MR. SHEASBY:

08:32:43 25 Q. Mr. Saffici, I'm going to show you a passage from the

08:32:49 1 '681 patent specification. If you'll go to Column 4,  
08:32:54 2 Lines 37 through 49?

08:32:57 3 THE COURT: Mr. Sheasby, why don't you direct that  
08:32:59 4 microphone so that it points in your direction better.  
08:33:03 5 Thank you.

08:33:03 6 MR. SHEASBY: Thank you, Your Honor.

08:33:04 7 Q. (By Mr. Sheasby) Now, this is a passage from the  
08:33:07 8 specification of the '681 patent, fair?

08:33:11 9 A. Yes.

08:33:11 10 Q. This passage also is present in the '605 patent  
08:33:16 11 specification, fair?

08:33:17 12 A. Yes.

08:33:20 13 MR. SHEASBY: Mr. Huynh, let's go ahead and  
08:33:24 14 underline an image capture device may be communicatively  
08:33:29 15 coupled to a computer; do you see that, sir?

08:33:32 16 A. Yes, I do.

08:33:32 17 Q. It says: An image capture device may be, for example,  
08:33:35 18 a scanner or digital camera; do you see that, sir?

08:33:37 19 A. Yes, I do.

08:33:38 20 Q. And yesterday, you told the ladies and gentlemen that  
08:33:40 21 you felt that that was teaching to a person of ordinary  
08:33:43 22 skill in the art, only a camera and a general purpose  
08:33:46 23 computer that were in separate physical boxes, fair?

08:33:49 24 A. That is what I said, yes.

08:33:50 25 Q. But the reality is that this passage describes an image

08:34:00 1 capture device that is communicatively coupled to a general  
08:34:04 2 purpose computer and does not place any limits on how that  
08:34:08 3 coupling occurs, correct?

08:34:10 4 A. Disagree.

08:34:13 5 Q. Can you turn to Tab 3 of your binders, Mr. Saffici?

08:34:21 6 A. Tab 3. Yes, I'm there.

08:34:23 7 Q. Can you turn to Page 62, Lines 24 to 63, Line 4?

08:34:37 8 A. 62, again, please?

08:34:38 9 Q. 62, Lines 24 to 63, Line 4.

08:34:48 10 The question starts: Does the passage at  
08:34:50 11 Column 4, Line 37; do you see that, sir?

08:34:53 12 A. Right.

08:34:54 13 Q. Go ahead and read that testimony to yourself.

08:35:06 14 A. Yes, I read that.

08:35:07 15 Q. Sir, the passage that we're showing at Column 4,  
08:35:16 16 Lines 37 through 49 of this patent specification describe  
08:35:20 17 an image capture device that is communicatively coupled to  
08:35:23 18 a general purpose computer and does not place any  
08:35:27 19 limitations on how the communicatively coupling occurs,  
08:35:33 20 correct?

08:35:33 21 A. My read of that was that it was separate because it was  
08:35:39 22 supported with other information in the specification.

08:35:43 23 Q. Sir --

08:35:44 24 MR. SHEASBY: Your Honor, may I now publish his  
08:35:46 25 testimony to the jury, which was -- which I believe was

08:35:51 1 inconsistent.

08:35:52 2 THE COURT: You can complete the impeachment  
08:35:54 3 process.

08:35:54 4 MR. SHEASBY: Okay. Mr. Huynh, can we have  
08:35:58 5 Mr. Saffici's deposition, 2 -- Volume 2, 62:24, to 63:4,  
08:36:47 6 please?

08:36:47 7 Q. (By Mr. Sheasby) Mr. Saffici, I took your deposition  
08:36:49 8 under oath in this case, correct?

08:36:51 9 A. Yes, sir.

08:36:52 10 Q. Mr. Saffici, you were given an opportunity to correct  
08:36:57 11 your deposition transcript, correct?

08:37:00 12 A. Yes, I was.

08:37:01 13 Q. Mr. Saffici, I asked you the question, quote: Does the  
08:37:05 14 passage at Column 4, Lines 37 through 49 in the '681  
08:37:10 15 describe -- '681 patent describe an image capture device  
08:37:14 16 communicatively coupled to a general purpose computer, does  
08:37:15 17 it place any limits on how the communicatively coupling  
08:37:22 18 occurs?

08:37:22 19 Your answer was: I do not see a limitation.

08:37:26 20 Correct?

08:37:26 21 A. That was my testimony, yes.

08:37:27 22 Q. And that's different from the testimony you gave the  
08:37:30 23 ladies and gentlemen of the jury on direct examination,  
08:37:31 24 correct?

08:37:31 25 A. That's correct.

08:37:36 1 Q. And so when the ladies and gentlemen of the jury retire  
08:37:38 2 to deliberate in this case, they can consider the fact that  
08:37:43 3 under oath represented by your counsel, you gave the  
08:37:48 4 testimony on the screen, you had an opportunity to correct  
08:37:52 5 that testimony, you did not correct it, and you grave --  
08:37:57 6 you gave a different answer to them yesterday, fair?

08:38:07 7 A. Yes, I did.

08:38:08 8 Q. Now, the claims of the '681 and '605 patents --

08:38:17 9 MR. SHEASBY: You can bring that down, Mr. Huynh.

08:38:20 10 Q. (By Mr. Sheasby) The claims of the '681 and '605  
08:38:24 11 patents require that there be communication between the  
08:38:28 12 digital camera and the general purpose computer, fair?

08:38:29 13 A. That's correct.

08:38:30 14 Q. There are no limits in -- in the claims as to how that  
08:38:35 15 communication occurs, correct?

08:38:36 16 A. Not in the claims.

08:38:41 17 Q. For example --

08:38:47 18 MR. SHEASBY: Let's pull up Column 4, Line 37, of  
08:38:56 19 the '681 patent, which is PX-1187, Mr. Huynh. Let's pull  
08:39:00 20 up that same passage. It was Column 4, Lines --

08:39:24 21 Q. (By Mr. Sheasby) Now, a person of ordinary skill in  
08:39:28 22 the art reading the '681 patent, Column 4, Lines 37, in  
08:39:31 23 2006, would understand that the camera was -- was connected  
08:39:35 24 to the computer in some way so that it could communicate,  
08:39:40 25 correct?



08:39:40 1 A. Yes.

08:39:40 2 Q. Doesn't matter whether it's wireless or a wired  
08:39:46 3 connection, correct?

08:39:46 4 A. Yeah, that's correct.

08:39:47 5 Q. When a mobile phone has a camera, there has to be an  
08:39:51 6 interconnectivity between the two, correct?

08:39:53 7 A. Ask me again, please.

08:39:56 8 Q. Sure. When a mobile phone has a camera within it,  
08:40:00 9 there has to be a communication between the general purpose  
08:40:05 10 processor in the mobile phone and the digital camera,  
08:40:07 11 correct?

08:40:07 12 A. I would agree.

08:40:09 13 Q. There has to be a communicative coupling, correct?

08:40:14 14 A. I believe that term would apply.

08:40:18 15 MR. SHEASBY: Let's pull that down, Mr. Huynh.

08:40:27 16 Q. (By Mr. Sheasby) Now, you also showed the ladies and  
08:40:31 17 gentlemen of the jury passages from the specification that  
08:40:34 18 related to this question of what is the meaning behind the  
08:40:38 19 phrase, a personal digital assistant, fair?

08:40:42 20 A. Yes.

08:40:42 21 Q. And we can pull up one of those passages.

08:40:45 22 MR. SHEASBY: Let's turn to PX-1186. Let's go to  
08:40:55 23 Page 23 of that document, Mr. Huynh. Let's go to Column 8,  
08:41:01 24 Lines 3 through 17.

08:41:08 25 Q. (By Mr. Sheasby) So we're looking at a passage from

08:41:10 1 the '605 patent, correct?

08:41:11 2 A. That's correct.

08:41:11 3 Q. It talks about using PDAs as alternatives to computers,  
08:41:17 4 correct?

08:41:17 5 A. It says that can be such a device.

08:41:19 6 Q. And the concept of a personal digital assistant to a  
08:41:23 7 person of ordinary skill in the art would be a handheld  
08:41:25 8 device that has a general purpose computer, correct?

08:41:29 9 A. In 2006, I don't know that that was necessarily true.

08:41:40 10 Q. Okay. Can you turn to your deposition, again, at  
08:41:45 11 Tab 3? If you can turn to Page 65:23 to 66:4.

08:42:02 12 A. Yes, I read that.

08:42:03 13 Q. Sir, the concept of a personal digital assistant to a  
08:42:09 14 POSA would be a handheld device that has a general purpose  
08:42:14 15 processor, correct?

08:42:14 16 A. That was my testimony.

08:42:16 17 Q. And by POSA, we -- we mean person of ordinary skill in  
08:42:22 18 the art?

08:42:22 19 A. That's correct.

08:42:23 20 Q. That was your testimony under oath, correct?

08:42:25 21 A. That's correct.

08:42:26 22 Q. And you gave different testimony just a few moments  
08:42:29 23 ago, correct?

08:42:29 24 A. I think I said --

08:42:31 25 MR. JOHNSON: Objection, Your Honor, optional

08:42:36 1 completeness as to the passage if that's the line of  
08:42:38 2 impeachment he's going to go through.

08:42:39 3 MR. SHEASBY: I won't -- I don't -- I don't intend  
08:42:42 4 to do anymore. I'm not going to impeach him. I'm not  
08:42:46 5 going to read his testimony.

08:42:47 6 THE COURT: You can address it on redirect.

08:42:49 7 MR. JOHNSON: Thank you, Your Honor.

08:42:49 8 THE COURT: Let's proceed.

08:42:51 9 Q. (By Mr. Sheasby) Now, you don't dispute that in 2006,  
08:42:55 10 there were dozens of personal digital assistants and  
08:43:00 11 smartphones that had general camera -- digital cameras  
08:43:03 12 integrated with a general purpose computer in the same  
08:43:05 13 physical box, correct?

08:43:06 14 A. I disagree with how you -- what -- with the question.

08:43:10 15 Q. By 2006, you recognize that there were personal digital  
08:43:21 16 assistants and smartphones that existed that had digital  
08:43:26 17 cameras integrated with a general purpose computer in the  
08:43:28 18 same physical box, correct?

08:43:29 19 A. I disagree.

08:43:30 20 Q. Why don't you turn to Page 2, Volume 2 -- transcript,  
08:43:36 21 66:9 through 15 in Tab 3?

08:43:42 22 A. Sorry, Tab 2 --

08:43:44 23 Q. Tab 3.

08:43:45 24 A. Tab 3.

08:43:48 25 Q. And why don't you turn to Page 66?

08:43:51 1 A. I'm there.

08:43:52 2 Q. Actually, why don't you turn to Page 67, Lines 14  
08:43:56 3 through 23 and read that testimony to yourself.

08:44:14 4 A. Okay. I read it.

08:44:15 5 Q. You read Mr. Calman's report in this case, correct?

08:44:18 6 A. Yes, I did.

08:44:19 7 Q. And after reading that -- after reading his report, you  
08:44:23 8 don't dispute that there were dozens of personal digital  
08:44:29 9 assistants and smartphones that existed as of 2006 that had  
08:44:34 10 digital cameras integrated with a general purpose computer  
08:44:38 11 in the same physical box, correct?

08:44:39 12 A. That wasn't my response to the testimony.

08:44:41 13 Q. In 2006, there were at least some smartphones and  
08:44:56 14 personal digital assistants that combine a general purpose  
08:45:01 15 computer and digital camera in the same form factor,  
08:45:03 16 correct?

08:45:03 17 A. I disagree.

08:45:04 18 Q. Okay. Why don't you turn to Column 66, Lines 9 through  
08:45:12 19 15 of that same deposition, sir?

08:45:13 20 A. Through 16 you said -- or 15?

08:45:15 21 Q. 66, Lines 9 through 15.

08:45:24 22 A. Yes, I read it.

08:45:25 23 Q. Sir, in 2006, there were at least some smartphones in  
08:45:30 24 personal digital assistants that combine a general purpose  
08:45:36 25 computer and digital cameras in the same form factor,

08:45:38 1 correct?

08:45:38 2 A. My answer didn't totally agree with that.

08:45:46 3 MR. SHEASBY: Your Honor, may I now publish his  
08:45:48 4 response?

08:45:49 5 THE COURT: You may.

08:45:50 6 MR. SHEASBY: Mr. Huynh, let's go to 66, Lines 9  
08:45:54 7 through 15.

08:45:55 8 Q. (By Mr. Sheasby) So I asked you the question about  
08:46:05 9 2006: There are at least some smartphones and personal  
08:46:09 10 digital assistants that combine the general purpose  
08:46:12 11 computer and digital camera in the same form factor.

08:46:15 12 Do you see that, sir?

08:46:16 13 A. Yes.

08:46:16 14 Q. And you said: Not having really analyzed it a lot, I  
08:46:20 15 would generally agree?

08:46:21 16 A. That's what I said, yes.

08:46:21 17 Q. Okay. So you've been elected by Wells Fargo to speak  
08:46:23 18 on the subject of PDAs as they existed in 2006, correct?  
08:46:26 19 That's one of the things you talked about under oath to the  
08:46:29 20 ladies and gentlemen of the jury yesterday?

08:46:29 21 A. I did.

08:46:30 22 Q. And yesterday -- and when I just asked you the  
08:46:33 23 question, whether PDAs existed and smartphones existed in  
08:46:37 24 2006 that integrated digital cameras and general purpose  
08:46:39 25 computers, you said you disagree, correct?

08:46:41 1 A. I disagree with part of that.

08:46:43 2 Q. Sir, the reality is that as Wells Fargo's expert, you  
08:46:48 3 did not analyze the question of smartphones and PDAs that  
08:46:54 4 existed in 2006 and whether they had digital purpose  
08:46:59 5 cameras, correct?

08:46:59 6 A. I'm sorry. Say it again.

08:47:00 7 Q. You did not analyze the question of whether smartphones  
08:47:03 8 and PDAs in 2006 had integrated digital cameras, correct?

08:47:07 9 A. No, I didn't analyze -- I didn't analyze the market and  
08:47:13 10 what it had in it.

08:47:16 11 Q. And you understand that to interpret the meaning of a  
08:47:18 12 patent, you have to understand it from the standpoint of a  
08:47:21 13 person of ordinary skill in the art, correct?

08:47:23 14 A. I understand.

08:47:23 15 Q. And a person of ordinary skill in the art would know  
08:47:36 16 about the state of the market in 2006, fair?

08:47:38 17 A. Possibly.

08:47:42 18 Q. But you don't, fair?

08:47:43 19 A. I do some of the market.

08:47:45 20 Q. Well, in reality, in 2006, persons of ordinary skill in  
08:47:51 21 the art knew that digital personal assistants and other  
08:47:55 22 portable devices, laptops, for example, had integrated  
08:47:58 23 digital cameras with general purpose computing power.

08:48:02 24 Generally that's correct, fair?

08:48:04 25 A. There were devices -- some devices out there like that,

08:48:06 1 yes.

08:48:06 2 MR. SHEASBY: Objection, nonresponsive, Your  
08:48:09 3 Honor.

08:48:09 4 THE COURT: Overruled.

08:48:09 5 Q. (By Mr. Sheasby) Sir, you agree that in 2006, it's  
08:48:13 6 generally correct that persons of skill in the art knew  
08:48:15 7 that personal digital assistants in other portable devices,  
08:48:19 8 laptops, for example, had integrated digital cameras with  
08:48:24 9 general purpose computing power, fair?

08:48:26 10 A. I could agree with that.

08:48:29 11 Q. When the patent --

08:48:51 12 MR. SHEASBY: Mr. Huynh, can you pull up the '605  
08:48:54 13 patent, Tab -- PX-1186, Page 16? And pull up next to it  
08:49:10 14 Column 6, Lines 39 through 56. And it's -- of 1186,  
08:49:55 15 Mr. Huynh, if that's of any assistance to you. And it's  
08:50:06 16 Column 6, Lines 39 through 56.

08:50:18 17 Q. (By Mr. Sheasby) So we're looking at passages from the  
08:50:20 18 '605 patent, correct?

08:50:21 19 A. That's correct.

08:50:22 20 Q. And Figure 3 of the '605 patent is discussed in the  
08:50:30 21 passage at right on the screen, correct?

08:50:32 22 A. That's correct.

08:50:32 23 Q. And this passage talks about the fact that the image  
08:50:36 24 capture device itself can have a general purpose processing  
08:50:41 25 unit, correct?

08:50:42 1 A. That's what the passage says.

08:50:47 2 Q. So the patent teaches a box, correct, in Figure 3?

08:50:55 3 A. Yes.

08:50:55 4 Q. Within that box there's an image capture apparatus,  
08:50:59 5 correct?

08:50:59 6 A. That's correct.

08:50:59 7 Q. And within that box is a general purpose processing  
08:51:03 8 unit, correct?

08:51:03 9 A. Yes.

08:51:06 10 Q. And the specification also discussed the fact that the  
08:51:10 11 image capture device with the general purpose computer can  
08:51:12 12 be in direct connection with the server, correct?

08:51:14 13 A. Where is it showing that? I'm sorry. Oh.

08:51:24 14 Q. Image capture device 300 --

08:51:26 15 A. Right, right. Okay. It says may include  
08:51:32 16 communications, right?

08:51:34 17 Q. Yes.

08:51:34 18 A. Okay. Yes, I see that.

08:51:37 19 Q. So we agree on one thing. Figure 3 is describing image  
08:51:41 20 capture device, correct?

08:51:41 21 A. That's correct.

08:51:42 22 Q. The image capture device is an image capture apparatus,  
08:51:46 23 correct?

08:51:46 24 A. Yes.

08:51:48 25 Q. That would include, for example, a camera lens,



08:51:51 1 correct?

08:51:51 2 A. Yes.

08:51:52 3 Q. It also includes a general purpose processor, correct?

08:51:56 4 A. Processing unit, it says.

08:52:02 5 Q. The answer to my question is yes?

08:52:06 6 A. Ask your question again.

08:52:08 7 Q. The passage talks about the fact that the image capture

08:52:13 8 device itself can have a general purpose processing unit,

08:52:16 9 correct?

08:52:16 10 A. I disagree.

08:52:18 11 Q. Okay. Why don't you turn to Volume -- why don't you

08:52:21 12 turn to Tab 3 again, 69, 10 through 16.

08:52:33 13 A. I'm sorry, page, please?

08:52:33 14 Q. Page 69, Lines 10 through 16, Mr. Saffici.

08:52:41 15 A. I see my testimony.

08:52:42 16 Q. The passage talks about the fact that the image capture

08:52:48 17 device itself can have a general purpose processing unit,

08:52:51 18 correct? That's what it shows on Figure 3?

08:52:52 19 A. Yeah, my testimony was yes.

08:52:54 20 Q. So just for the ladies and gentlemen of the jury, under

08:52:57 21 oath in deposition, you admitted that Figure 3 describes a

08:53:03 22 box in which there is an image capture apparatus and a

08:53:08 23 general purpose computer -- withdraw the question.

08:53:09 24 For the ladies and gentlemen of the jury, you

08:53:13 25 admitted at your deposition that Figure 3, the processing

08:53:18 1 unit 302, can be a general purpose computer, fair?

08:53:20 2 A. That was my testimony.

08:53:22 3 MR. JOHNSON: Objection, Your Honor.

08:53:23 4 Mischaracterizes the testimony. That's not what he says

08:53:28 5 general purpose computer -- he's been saying general

08:53:31 6 purpose processor.

08:53:31 7 THE COURT: Well, he's already answered the

08:53:34 8 question, Mr. Johnson. You can review it with him when you

08:53:38 9 redirect.

08:53:39 10 MR. JOHNSON: Thank you, Your Honor.

08:53:40 11 Q. (By Mr. Sheasby) And in front of this jury just a

08:53:43 12 couple minutes ago, you said the opposite, fair?

08:53:45 13 A. Am I able to explain?

08:53:55 14 MR. SHEASBY: Your Honor, can I ask him that he --

08:53:58 15 can I request that you instruct the witness to answer the

08:54:00 16 question?

08:54:01 17 THE WITNESS: Okay.

08:54:03 18 THE COURT: Restate the question. And then,

08:54:06 19 Mr. Saffici, answer the question as it's presented. As

08:54:09 20 I've made clear, Mr. Johnson is going to have a chance to

08:54:12 21 review anything he thinks is important with you when he

08:54:17 22 gets an opportunity to ask follow-up questions.

08:54:19 23 THE WITNESS: Yes, Your Honor.

08:54:19 24 THE COURT: So state your question.

08:54:22 25 Q. (By Mr. Sheasby) Figure 3, you testified under oath at

08:54:25 1 deposition, describes a general purpose processing unit --  
08:54:29 2 general purpose processing unit, correct?  
08:54:29 3 A. That's -- testimony is correct, yes.  
08:54:31 4 Q. And you gave different testimony to the jury, correct?  
08:54:34 5 A. Yes.  
08:54:41 6 Q. Now, you talked about the '200 patent specification.  
08:54:53 7 That's one of the earlier family members of the '681  
08:54:56 8 patent, correct?  
08:54:57 9 A. That's correct.  
08:54:57 10 Q. And the '200 patent specification is identical to the  
08:55:04 11 '681 patent specification, correct?  
08:55:05 12 A. Say it again, please.  
08:55:07 13 Q. The '200 patent specification is substantively  
08:55:12 14 identical to the '681 patent?  
08:55:13 15 A. Oh, yes, that -- that's correct, yes.  
08:55:15 16 Q. So if there's something taught in this -- if you can  
08:55:18 17 learn something from looking at the '200 patent  
08:55:21 18 specification, you'll be able to learn that exact same  
08:55:24 19 thing from looking at the '681 patent specification, fair?  
08:55:27 20 A. That's correct.  
08:55:29 21 Q. And why don't you turn to your deposition at Pages 9:22  
08:55:54 22 through 10:1?  
08:55:55 23 A. I'm sorry. Again, Mr. Sheasby?  
08:55:57 24 Q. Sure. Page 9 --  
08:56:00 25 A. Oh, 9.

08:56:01 1 Q. Lines 22 through Page 10.

08:56:12 2 A. Starting where again?

08:56:16 3 Q. Column -- Page 9, Line 22, through 10, Line 1.

08:56:35 4 MR. JOHNSON: Your Honor, I would object. There's  
08:56:37 5 no pending question for which the witness is being  
08:56:39 6 refreshed from recollection or impeachment.

08:56:42 7 THE COURT: Approach the bench, please.

08:56:50 8 (Bench conference.)

08:56:50 9 THE COURT: You're asking him to read a portion of  
08:56:53 10 his prior --

08:56:54 11 MR. SHEASBY: To refresh his -- his recollection,  
08:56:56 12 and then I'm going to ask him --

08:56:58 13 THE COURT: Are you -- you -- there's no reason to  
08:57:00 14 refresh his recollection unless he's indicated a lack of  
08:57:04 15 memory.

08:57:05 16 MR. SHEASBY: I'll proceed, Your Honor.

08:57:06 17 THE COURT: I mean, if he says I don't remember,  
08:57:08 18 then that's certainly appropriate.

08:57:09 19 MR. SHEASBY: Okay.

08:57:11 20 (Bench conference concluded.)

08:57:18 21 THE COURT: Let's proceed.

08:57:23 22 MR. SHEASBY: So let's pull up, Mr. Huynh, 1187,  
08:57:32 23 Claim 1. And let's pull up through the limitation -- the  
08:57:50 24 preamble and the first limitation and the second two  
08:57:58 25 limitations. Right there. That will be great. So let's

08:58:07 1 put that all together.

08:58:11 2 Q. (By Mr. Sheasby) So one of the opinions you gave to  
08:58:15 3 the ladies and gentlemen of the jury was that you don't  
08:58:17 4 believe that the limitation --

08:58:28 5 MR. JOHNSON: Your Honor, I would object. I  
08:58:31 6 believe Claim 1 of the '681 is not asserted.

08:58:34 7 MR. SHEASBY: I'll pull it down. We can go --  
08:58:37 8 let's go to Claim -- Claim 12.

08:58:42 9 THE COURT: That's sustained.

08:58:43 10 MR. JOHNSON: Thank you, Your Honor.

08:58:51 11 MR. SHEASBY: So let's pull up Claim 12, through a  
08:58:55 12 downloaded software application, Mr. Huynh.

08:59:01 13 Q. (By Mr. Sheasby) So we're looking at Claim 12 of the  
08:59:03 14 '681 patent. And what you told the ladies and gentlemen of  
08:59:07 15 the jury was that you don't think that the -- this -- these  
08:59:11 16 limitations are disclosed -- strike that.

08:59:17 17 You told the ladies and gentlemen of the jury you  
08:59:19 18 don't think these limitations are described in that common  
08:59:22 19 specification shared by the '200 patent and the '681  
08:59:26 20 patent, fair?

08:59:27 21 A. Yes, that's what I said.

08:59:28 22 Q. You gave the exact opposite testimony in your  
08:59:33 23 deposition, correct?

08:59:34 24 A. I don't recall.

08:59:37 25 Q. Turn to Volume 2 -- turn to Pages 9:22, through 10:1 in

08:59:45 1 your deposition.

08:59:46 2 A. Page 9, 20 --

08:59:49 3 Q. 22 through 10:1.

08:59:58 4 A. Yes, I see that.

08:59:59 5 Q. In your deposition, you testified under oath that every  
09:00:04 6 limitation we see on the screen in Claim 12 is described --  
09:00:10 7 described in that common specification shared by the '200  
09:00:15 8 patent and the '681 patent, correct?

09:00:17 9 A. When we were talking about anticipation, yes.

09:00:20 10 MR. SHEASBY: Objection -- Your Honor, objection.  
09:00:23 11 I move to strike. Non-responsive.

09:00:25 12 THE COURT: "Yes" is the correct answer. I'll  
09:00:47 13 strike the portion of the response, except the word "yes."  
09:00:54 14 Q. (By Mr. Sheasby) And, in fact, when I asked you the  
09:00:59 15 question at your deposition whether the common  
09:01:01 16 specification of the Oakes '200 patent and the '681 patent  
09:01:06 17 describes the limitations on the screen before the ladies  
09:01:10 18 and gentlemen of the jury, you just said: That's my  
09:01:14 19 opinion, yes.

09:01:17 20 Correct?

09:01:18 21 A. That was my testimony.

09:01:20 22 Q. It was unqualified, correct?

09:01:22 23 A. At that point.

09:01:25 24 Q. No ifs, buts about it, correct?

09:01:30 25 A. Yes, that was my testimony.

09:01:31 1 Q. And so when the ladies and gentlemen of the jury go  
09:01:33 2 back to deliberate, it is fair for them to consider that  
09:01:36 3 under oath, represented by your counsel, in a deposition  
09:01:39 4 that you had the right to correct, you, without  
09:01:42 5 qualification, said that every single limitation on the  
09:01:46 6 screen right now, mobile device, digital camera,  
09:01:50 7 communication together is described in that common  
09:01:52 8 specification, correct? They're allowed to consider that?  
09:01:56 9 A. That was my testimony at that point, yes.

09:02:05 10 Q. The common shared specification between the Oakes '200  
09:02:12 11 patent and the '681 patent describes a portable device  
09:02:16 12 comprising a general purpose computer, including a  
09:02:21 13 processor coupled to a memory, correct?

09:02:22 14 A. I'm sorry. Repeat that, please.

09:02:24 15 Q. Sure. The common specification, that 2000 [sic]  
09:02:29 16 specification, describes a portable device comprising a  
09:02:36 17 general purpose computer, including a processor coupled to  
09:02:38 18 memory, correct?

09:02:38 19 A. Can -- can you tell me where you're -- in the  
09:02:44 20 specification you're reading from?

09:02:45 21 Q. Sir, I'm -- I'm asking you your opinion as an expert.

09:02:54 22 A. I disagree.

09:02:55 23 Q. Turn to Volume 2 of your deposition, Lines 11, 14 --  
09:03:03 24 Page 11, 14 through 18.

09:03:16 25 A. Yes, I see my testimony.

09:03:18 1 Q. Sir, it is your sworn opinion under oath that the  
09:03:23 2 common specification of the Oakes '200 patent and the '681  
09:03:26 3 patent describe a portable device comprising a general  
09:03:31 4 purpose computer, including a processor coupled to memory,  
09:03:38 5 correct?

09:03:38 6 A. Yes.

09:03:41 7 Q. Based on that testimony, it is not correct that the  
09:03:45 8 2006 specification only describes using a desktop or laptop  
09:03:49 9 computer connected to a separate camera, correct?

09:03:52 10 A. Say it again, please.

09:03:54 11 Q. Based on your testimony, it is not correct that the  
09:03:58 12 2006 specification only describes using a desktop or laptop  
09:04:05 13 computer connected to a separate camera, correct?

09:04:05 14 A. Based on my testimony at that time, that's correct.

09:04:10 15 Q. Now, you also talked about the Oakes '227 patent and  
09:04:26 16 the '605 patent, correct?

09:04:31 17 A. Yes.

09:04:32 18 Q. And those, once again, are in that same family. They  
09:04:36 19 have the same common specification, correct?

09:04:37 20 A. '227 and '605.

09:04:40 21 Q. If -- if you can learn something from looking at the  
09:04:43 22 '227 patent specification, you're going to be -- be able to  
09:04:46 23 learn the exact same thing by looking at that '681 patent  
09:04:49 24 specification, correct?

09:04:50 25 A. That's incorrect.



09:04:53 1 Q. Let me --

09:04:54 2 A. I mean, I disagree. I apologize.

09:04:56 3 Q. Let me ask you the question. The -- and I withdraw the  
09:04:58 4 question because it was improper.

09:05:01 5 The '227 patent specification and the '605 patent  
09:05:06 6 specification are identical, correct?

09:05:07 7 A. That's correct, yes.

09:05:08 8 Q. And, in fact, you conclude that the specification of  
09:05:29 9 the '227 patent teaches that a handheld device may include  
09:05:34 10 a digital camera, correct?

09:05:34 11 A. Can you point me to where I said that, please?

09:05:41 12 Q. Why don't you turn to Tab 4 --

09:05:43 13 A. Tab 4.

09:05:44 14 Q. -- which is your report.

09:05:50 15 A. Okay.

09:05:50 16 Q. Paragraph 209 of your report.

09:05:59 17 A. 209, right?

09:06:03 18 Q. Yes, sir.

09:06:50 19 A. And your question again was?

09:06:51 20 Q. So you talk about what the Oakes '227 patent, quote,  
09:06:56 21 teaches, correct?

09:06:57 22 A. That's correct.

09:06:57 23 Q. The Oakes '227 patent is the exact same specification  
09:07:01 24 as the '605 patent, correct?

09:07:02 25 A. Yes.

09:07:02 1 Q. And you -- you agree that the Oakes '227 patent teaches  
09:07:06 2 that the handheld device may include a digital camera,  
09:07:10 3 correct?

09:07:10 4 A. That is in my report, yes.

09:07:11 5 Q. So in your report, you concluded that the Oakes '227  
09:07:17 6 patent, which is the exact same specification as the '605  
09:07:20 7 patent, teaches the use of a handheld device that may  
09:07:25 8 include a digital camera, correct?

09:07:26 9 A. Yes, it says that.

09:07:34 10 Q. Mr. Saffici, would it be fair to say that after the  
09:07:42 11 conversation we had yesterday and the conversation we had  
09:07:47 12 this morning, that perhaps it's not as clear as you once  
09:07:51 13 thought as to what's disclosed in the patents-in-suit?  
09:07:54 14 Would that be a fair thing for someone to take away from  
09:07:58 15 our conversation?

09:07:58 16 A. I'm sorry, say -- say that again, please.

09:08:01 17 Q. Do you think it'd be fair to take from our  
09:08:05 18 conversations over the last two days on this subject that  
09:08:10 19 what's in the specification is not necessarily something  
09:08:13 20 that is clearly in your mind right now?

09:08:15 21 A. I believe it's clearly in my mind.

09:08:19 22 Q. And what's clearly in your mind is that in your report,  
09:08:27 23 you said that the specification teaches that the handheld  
09:08:30 24 device may include a digital camera, correct?

09:08:33 25 A. I did say that, yes.

09:08:35 1 Q. Mr. Saffici, you did not identify any third-party art  
09:08:48 2 that calls into question the novelty of either the '681  
09:08:58 3 patent or '605 patent, correct?

09:09:05 4 A. I disagree.

09:09:06 5 Q. Why don't you turn to your same deposition, Lines 23, 6  
09:09:15 6 through 11?

09:09:29 7 A. I'm sorry, what were the lines again?

09:09:31 8 Q. 23, Lines 6 through 11.

09:09:52 9 A. Yeah, I see what I said.

09:09:53 10 Q. Sir, you testified under oath that you do not identify  
09:09:56 11 any third-party art that anticipates or renders obvious the  
09:10:00 12 '681 and '605 patents, correct?

09:10:01 13 A. Can I -- can I ask you to clarify third party?

09:10:11 14 Q. Third party would exclude USAA's patents.

09:10:15 15 A. Okay. That's the confusion, sorry.

09:10:18 16 Q. So I want to put aside the theory that you have on the  
09:10:21 17 Oakes '200 and Oakes '227 patent.

09:10:24 18 A. Right.

09:10:25 19 Q. I'm talking about what folks -- what other folks did --

09:10:27 20 A. Okay.

09:10:27 21 Q. -- what Wells Fargo did or all those other companies  
09:10:30 22 you talked about in your direct. You don't identify any  
09:10:32 23 third party, Wells Fargo or otherwise, that has prior art  
09:10:36 24 that anticipates or renders obvious the patents-in-suit in  
09:10:40 25 this case, correct?

09:10:40 1 A. That's correct.

09:10:41 2 Q. And you did a study on that, correct?

09:10:42 3 A. I looked, yes.

09:10:43 4 Q. You don't identify any system, any design anywhere in  
09:10:49 5 the world that anticipates or renders obvious the '605 or  
09:10:53 6 '681 patent, correct?

09:10:53 7 A. That was my testimony then and now.

09:10:55 8 Q. And, for example, you looked at Wells Fargo's --

09:10:57 9 THE COURT: Let him finish his answer,

09:10:59 10 Mr. Sheasby.

09:10:59 11 MR. SHEASBY: I apologize, Your Honor.

09:11:01 12 A. All I was saying was that was in my answer in the  
09:11:05 13 testimony, and it's still my answer.

09:11:07 14 Q. (By Mr. Sheasby) And you looked at Wells Fargo's CEO  
09:11:10 15 Desktop system, correct, that system that uses the  
09:11:14 16 specialized scanner and you analyzed that, correct?

09:11:16 17 A. Yes.

09:11:26 18 MR. SHEASBY: Now, why don't we -- Mr. Huynh,  
09:11:30 19 let's go to PX-1187, Page 27, and let's look at Claim 12.  
09:11:44 20 Claim 12, Mr. Huynh. Let's go ahead and pull that up --  
09:11:50 21 let's pull up the entire claim, if you would.

09:11:53 22 Q. (By Mr. Sheasby) Now, Claim 12 describes a system for  
09:11:57 23 allowing a customer to deposit a check using the camera's  
09:12:00 24 own mobile device with a digital camera, correct? Let me  
09:12:04 25 reask the question.

09:12:05 1 The '681 patent, Claim 12, describes a system for  
09:12:08 2 allowing a customer to deposit a check using the customer's  
09:12:11 3 own mobile device with a digital camera, correct?

09:12:13 4 A. That's correct -- that's correct.

09:12:15 5 THE COURT: Mr. Sheasby, you are going to have to  
09:12:17 6 slow down.

09:12:17 7 MR. SHEASBY: Yes, Your Honor.

09:12:18 8 THE COURT: It does no good for you to ask things  
09:12:21 9 so quickly that neither the Court nor the jury can follow  
09:12:25 10 you. Slow down, please.

09:12:28 11 MR. SHEASBY: Thank you, Your Honor.

09:12:29 12 Q. (By Mr. Sheasby) At your deposition, that's described  
09:12:34 13 as MRDC, correct?

09:12:35 14 A. That mobile remote deposit capture, yes.

09:12:40 15 Q. The '681 patent, Claim 12, describes what's known as  
09:12:47 16 MRDC, correct, mobile remote deposit capture?

09:12:51 17 A. Yes.

09:12:51 18 Q. At your deposition, you were unable to think of any way  
09:12:55 19 of implementing mobile remote deposit capture, other than  
09:13:00 20 what's recited in Claim 12 of the '681 patent, correct?

09:13:03 21 A. I don't recall.

09:13:04 22 Q. Why don't you turn to Page 122, Lines 7 through 15?

09:13:10 23 A. 122 of my deposition?

09:13:12 24 Q. Yes, sir.

09:13:13 25 A. I'm sorry, lines again, please?

09:13:24 1 Q. Yes, sir. Lines 7 through 15.

09:13:43 2 A. Okay. I read my deposition.

09:13:45 3 Q. Sir, at your deposition, you were unable to think of  
09:13:49 4 any way of implementing mobile remote deposit capture other  
09:13:52 5 than what's recited in Claim 12 of the '681 patent,  
09:13:56 6 correct?

09:13:56 7 A. You didn't actually categorize my answers the way it's  
09:14:03 8 in my testimony.

09:14:04 9 Q. Sir, at your deposition, you couldn't answer the  
09:14:08 10 question as to whether there is any other way of  
09:14:10 11 implementing mobile remote deposit capture, other than  
09:14:13 12 what's described in Claim 12, correct?

09:14:15 13 A. That's not totally correct.

09:14:23 14 Q. At your -- in your trial testimony, did you describe to  
09:14:27 15 the jury any alternative method of doing mobile remote  
09:14:31 16 deposit capture beyond what's at issue -- what's described  
09:14:33 17 in Claim 12?

09:14:35 18 A. Here at trial, you said?

09:14:36 19 Q. Yes.

09:14:37 20 A. No, I didn't.

09:14:50 21 Q. And you are an expert in remote deposit capture,  
09:14:50 22 correct?

09:14:50 23 A. That's one of my areas of expertise.

09:14:53 24 Q. And you've been retained on this matter for close to 11  
09:14:59 25 months, correct, sir?

09:15:01 1 A. That's correct.

09:15:01 2 Q. Now, you don't disagree -- you don't disagree that all  
09:15:12 3 the claims of the patents-in-suit require the image that is  
09:15:14 4 captured is in a form sufficient to allow money to be  
09:15:17 5 credited to an account, correct?

09:15:19 6 A. I agree.

09:15:19 7 Q. And for a check image to be used as a substitute check  
09:15:23 8 to be the legal equivalent of the actual physical check,  
09:15:26 9 the image has to be of sufficient quality such that it's  
09:15:29 10 accurately representing all the images on the original  
09:15:31 11 check, correct?

09:15:34 12 A. That's correct.

09:15:34 13 Q. And the claims of the '605 and '681 patent talk -- talk  
09:15:41 14 about displaying a graphical illustration to assist the  
09:15:44 15 user in the digital camera capture process, correct?

09:15:46 16 A. That's part of Claim -- of Claim 12, yes.

09:15:51 17 Q. And it talks about giving instructions to the user to  
09:15:53 18 ensure that the image is captured properly, correct?

09:15:58 19 A. There's some instructions identified there.

09:16:02 20 THE COURT: Approach the bench, counsel.

09:16:04 21 (Bench conference.)

09:16:10 22 THE COURT: You are super fast. Faster than  
09:16:16 23 you've been this whole trial. I don't know how much  
09:16:19 24 caffeine you had this morning, but you have got to slow  
09:16:22 25 down.

09:16:23 1 MR. SHEASBY: I understand, Your Honor.

09:16:24 2 THE COURT: I don't think the jury is following  
09:16:27 3 your questions. I'm having trouble keeping up with them.  
09:16:31 4 It's a burden on the Court staff to take it down. You're  
09:16:35 5 going to have to slow down.

09:16:37 6 MR. SHEASBY: I will, Your Honor.

09:16:38 7 THE COURT: All right.

09:16:38 8 MR. SHEASBY: Thank you, Your Honor.

09:16:39 9 THE COURT: All right. Let's proceed.

09:16:40 10 (Bench conference concluded.)

09:16:46 11 THE COURT: Let's proceed.

09:16:47 12 Q. (By Mr. Sheasby) The patent specification talks --  
09:16:50 13 talked about giving guidance and instructions to the user  
09:16:54 14 so that the -- an image of sufficient quality can be  
09:16:56 15 captured, fair?

09:16:58 16 A. That doesn't really talk about -- can I just say I  
09:17:14 17 disagree with you.

09:17:16 18 Q. Can you turn to Page 166, Lines 2 through 11 of your  
09:17:20 19 deposition, sir?

09:17:50 20 A. I've read it.

09:17:52 21 Q. Sir, the specifications talk about giving guidance and  
09:18:04 22 instructions to the user so that an image of sufficient  
09:18:09 23 quality will be captured, correct?

09:18:10 24 A. That was my testimony.

09:18:11 25 Q. The claims talk about the same, correct?



09:18:13 1 A. That was my testimony.

09:18:16 2 Q. You did nothing to determine whether the USAA patents  
09:18:19 3 have contributed to the commercial success of mobile remote  
09:18:23 4 deposit capture, correct?

09:18:23 5 A. I was not asked to do that.

09:18:34 6 Q. Well, in your report, you stated that you were not  
09:18:36 7 aware of any evidence of commercial success relating to the  
09:18:39 8 specific systems and methods claimed in the asserted  
09:18:44 9 patents, correct? That's what you wrote in your report?

09:18:46 10 A. Can you show me where that was, please?

09:18:48 11 Q. Why don't you turn to 227 -- the same deposition,  
09:18:53 12 227:23 to 228:6?

09:19:12 13 A. What was the lines again, please?

09:19:15 14 Q. 227, Lines 23, to 228, Line 6.

09:19:27 15 A. Yes, I've read that.

09:19:31 16 Q. Sir, in your report, you stated that you're not aware  
09:19:34 17 of any evidence of commercial success relating to the  
09:19:36 18 specific systems and claims -- methods claimed in the  
09:19:40 19 asserted patents, correct?

09:19:42 20 A. That is what I said.

09:19:43 21 Q. But the reality is you did nothing whatsoever to  
09:19:47 22 investigate that question, correct?

09:19:48 23 A. I don't believe I did any extensive analysis.

09:19:53 24 Q. Sir, you didn't do any --

09:19:55 25 A. I didn't any --

09:19:56 1 Q. You didn't do any analysis?

09:19:58 2 A. Didn't do any.

09:20:03 3 MR. SHEASBY: Let's go to PX-7, Page 13.

09:20:07 4 Q. (By Mr. Sheasby) This is Tab 26 in your binder,

09:20:08 5 Mr. Saffici.

09:20:08 6 A. I'm sorry, which?

09:20:09 7 Q. PX-7, Lines 13. This is Tab 7 in your -- Tab 26 in

09:20:14 8 your binder which you're absolutely welcome to look at, but

09:20:17 9 it will also be on the screen?

09:20:19 10 A. You said 7?

09:20:21 11 Q. Tab 26.

09:20:22 12 A. Tab 26?

09:20:23 13 Q. That will be in Binder No. 3.

09:20:26 14 MR. SHEASBY: Let's put it up, Mr. Huynh. 7.

09:20:39 15 A. That was Tab 26, right?

09:20:43 16 Q. (By Mr. Sheasby) Yeah.

09:20:47 17 A. Is that right, Tab 26?

09:20:48 18 Q. Tab 27 --

09:20:49 19 A. Oh, 27?

09:20:50 20 Q. Yes, sir.

09:20:51 21 MR. SHEASBY: And we'll put it up on the screen.

09:20:54 22 Page 7, Mr. Huynh.

09:20:57 23 A. Wait a minute. I think these are mislabeled.

09:21:02 24 Q. (By Mr. Sheasby) Page 13, sorry.

09:21:04 25 A. It's really Tab 26.

09:21:05 1 Q. It is Tab 26.

09:21:07 2 A. Okay. I'm there.

09:21:14 3 MR. SHEASBY: Is this PX-7, Mr. Huynh?

09:21:38 4 Q. (By Mr. Sheasby) It's on the screen, Mr. Saffici.

09:21:39 5 A. Yeah, I see it.

09:21:40 6 Q. So this is a Wells Fargo presentation that talks about

09:21:44 7 MRDC as being table stakes, correct?

09:21:46 8 A. That's what the title says, yes.

09:21:48 9 Q. And you understand that Wells Fargo is stating that

09:21:51 10 MRDC is a table stakes capability, correct?

09:21:54 11 A. That's the heading, yes.

09:21:55 12 Q. And you can see that one definition of table stakes

09:21:59 13 capability means that it's a capability one must have to

09:22:03 14 compete, correct?

09:22:04 15 A. I guess that's an acceptable definition.

09:22:10 16 Q. Sir, is it fair for the ladies and gentlemen of the

09:22:16 17 jury to consider the fact that you're an RDC expert?

09:22:19 18 A. Table stakes has nothing to do with RDC. That's not a

09:22:25 19 term associated with RDC.

09:22:27 20 MR. SHEASBY: Your Honor, non-responsive.

09:22:32 21 A. Ask the question again, please.

09:22:34 22 THE COURT: Just a minute.

09:22:35 23 THE WITNESS: Oh, sorry.

09:22:36 24 THE COURT: I'll sustain the objection.

09:22:57 25 Restate the question, counsel.

09:22:57 1 Q. (By Mr. Sheasby) Sir, you -- you told the jury that  
09:22:59 2 you're an expert in RDC, correct?

09:23:01 3 A. That's among my expertise.

09:23:03 4 Q. Sir, and you concede that one definition of table  
09:23:07 5 stakes is a capability that one must have to compete,  
09:23:09 6 correct?

09:23:09 7 A. Is that on the screen? That's what the yellow  
09:23:16 8 highlight is?

09:23:17 9 THE COURT: You need to answer the question,  
09:23:19 10 Mr. Saffici, whether it's on the screen or not.

09:23:21 11 THE WITNESS: Okay.

09:23:23 12 A. Again, Mr. Sheasby. Sorry.

09:23:26 13 Q. (By Mr. Sheasby) It's fair for the jury to conclude  
09:23:29 14 that one reasonable interpretation of Wells Fargo's  
09:23:31 15 description of MRDC as table stakes is that it is a  
09:23:37 16 capability that it must have to compete, correct?

09:23:39 17 A. I don't feel I could answer that.

09:23:47 18 Q. Why don't we turn to Tab 35 in your binder?

09:24:11 19 A. I'm there.

09:24:12 20 Q. And why don't we turn to Paragraph 91?

09:24:25 21 A. I'm there.

09:24:25 22 Q. Now, Paragraph 91 of the binder is a portion of  
09:24:35 23 Mr. Gerardi's expert report, correct?

09:24:38 24 A. I see that from the cover page.

09:24:40 25 Q. Mr. Gerardi is Wells Fargo's damages expert in this

09:24:42 1 case, correct?

09:24:44 2 A. That's correct.

09:24:44 3 Q. And he lists a set of bullet points of technical  
09:24:50 4 modifications, correct?

09:24:51 5 A. Yes.

09:24:53 6 Q. You did nothing whatsoever to investigate whether  
09:24:56 7 Mr. Gerardi's proposed technical modifications to Wells  
09:25:00 8 Fargo's design were commercially viable, correct?

09:25:03 9 A. I didn't have input into his report, no.

09:25:10 10 MR. SHEASBY: Objection, nonresponsive.

09:25:11 11 THE WITNESS: Okay. That wasn't the answer to the  
09:25:13 12 question.

09:25:14 13 Q. (By Mr. Sheasby) You did nothing --

09:25:15 14 THE COURT: Just -- just -- just a minute. We're  
09:25:17 15 going to get this examination back on track.

09:25:23 16 You're going to wait until he's finished before  
09:25:26 17 you ask another question.

09:25:27 18 And you're not going to keep talking while he's  
09:25:29 19 asking the question. And the answer needs to respond to  
09:25:31 20 the question. And if you don't understand, it's perfectly  
09:25:34 21 fine to say "I don't understand" or give a yes or a no or  
09:25:38 22 an explanation, whatever the question's called for, but go  
09:25:42 23 no further than what the question calls for.

09:25:46 24 And, Mr. Sheasby, you're going to have to slow  
09:25:48 25 down and let the witness have time to respond before you

09:25:51 1 move on to the next question.

09:25:52 2 Let's both of you try to see if we can do this in  
09:25:56 3 a more orderly fashion going forward.

09:25:57 4 THE WITNESS: Yes, Your Honor.

09:25:58 5 THE COURT: All right. Counsel, ask your next  
09:26:01 6 question.

09:26:01 7 Q. (By Mr. Sheasby) You did nothing to investigate  
09:26:05 8 whether there are any commercially viable non-infringing  
09:26:08 9 alternatives to the patents-in-suit in this case, correct?

09:26:12 10 A. That's correct.

09:26:27 11 Q. And you did absolutely nothing to investigate whether  
09:26:30 12 Wells Fargo had the focused R&D capability that would allow  
09:26:34 13 it to create an alternative to USAA's MRDC system, correct?

09:26:38 14 A. That's correct.

09:26:39 15 Q. And you are the only remote deposit capture expert from  
09:26:46 16 Wells Fargo that the jury is ever going to hear from at  
09:26:48 17 this trial, correct?

09:26:49 18 A. That's correct.

09:26:51 19 MR. SHEASBY: I pass the witness, Your Honor.

09:26:53 20 THE COURT: Redirect by the Defendant?

09:26:54 21 MR. JOHNSON: Yes, Your Honor. Sorry, Your Honor,  
09:27:10 22 I need just a moment to reposition all this.

09:27:12 23 THE COURT: That's fine. Take a moment.

09:27:14 24 MR. JOHNSON: Thank you.

09:27:39 25 THE COURT: When you're ready, you may proceed.

09:27:41 1 MR. JOHNSON: Thank you, Your Honor. May it  
09:27:41 2 please the Court.

09:27:41 3 REDIRECT EXAMINATION

09:27:42 4 BY MR. JOHNSON:

09:27:42 5 Q. Good morning, Mr. Saffici.

09:27:45 6 A. Good morning, Mr. Johnson. How are you?

09:27:48 7 Q. Good.

09:27:48 8 I want to visit with you about a couple of things  
09:27:50 9 that Mr. Sheasby has been talking to you about, and we're  
09:27:53 10 going to talk about some very important foundational things  
09:27:58 11 here upfront.

09:27:59 12 Mr. Saffici, have you ever met really intelligent  
09:28:02 13 people who got that way through work, not through a college  
09:28:04 14 degree or going to some Ivy League school?

09:28:15 15 A. I can't recall.

09:28:16 16 Q. Well, sir, people -- some people go to school and they  
09:28:20 17 get their education through college, right?

09:28:20 18 A. That's correct.

09:28:21 19 Q. Other people, like you, go out and work for 53 years  
09:28:24 20 and acquire expertise. Are you aware of that?

09:28:27 21 A. I am.

09:28:27 22 Q. Okay. In fact, that's what you've done, right, sir?

09:28:33 23 A. That's correct.

09:28:33 24 Q. Now, yesterday, Mr. Saffici, you were asked about the  
09:28:37 25 fact that despite your 53 years of experience and having

09:28:41 1 been qualified as an expert by this Court, whether you met  
09:28:45 2 a definition that Mr. Sheasby gave you of a person of  
09:28:49 3 ordinary skill in the art. Do you remember that right at  
09:28:50 4 the beginning?

09:28:51 5 A. Yes, I do.

09:28:52 6 Q. Okay. Well, I want to take a look at the questions  
09:28:55 7 that you were asked, sir.

09:28:57 8 Do you remember that he referred you to  
09:29:02 9 Dr. Villasenor's report?

09:29:04 10 A. Yes.

09:29:05 11 Q. Said it was behind you in some of these stacks?

09:29:08 12 A. Yes.

09:29:22 13 MR. JOHNSON: Can I have the document camera?  
09:29:25 14 Thank you.

09:29:34 15 Q. (By Mr. Johnson) Okay. Ask you to go to  
09:29:41 16 Dr. Villasenor's report, Paragraph 16. Do you see that?

09:29:48 17 A. Yes.

09:29:48 18 Q. Now, he gave you some very specific instructions about  
09:29:51 19 how you should read that report, didn't he?

09:29:53 20 A. I believe so.

09:29:54 21 Q. Okay. Number one, he said do not read it out loud?

09:30:00 22 A. Yes.

09:30:01 23 Q. Okay. Second thing he asked you to do was what?

09:30:06 24 A. Just the first sentence.

09:30:09 25 Q. Okay. The first sentence of Paragraph 16. Did you do



09:30:11 1 that?

09:30:12 2 A. Yes, I did.

09:30:13 3 Q. Okay. And when Mr. -- when you read that first

09:30:22 4 sentence, Mr. Sheasby read it to you, you candidly agreed

09:30:26 5 with the definition that was stated in that first sentence,

09:30:29 6 right?

09:30:29 7 A. I did.

09:30:29 8 MR. SHEASBY: Objection, Your Honor, these

09:30:31 9 questions are leading.

09:30:33 10 THE COURT: Sustained as to leading.

09:30:37 11 Q. (By Mr. Johnson) Did you agree with Mr. Sheasby's

09:30:39 12 characterization of the first sentence of Mr. Villasenor's

09:30:44 13 report that you read?

09:30:46 14 A. I'm sorry, Mr. Johnson, again.

09:30:50 15 Q. Did you candidly agree with him about the first

09:30:53 16 sentence of Mr. Villasenor's report that he read to you?

09:30:57 17 A. I did agree with him.

09:30:58 18 Q. Okay. Well, sir --

09:31:00 19 MR. JOHNSON: Mr. Bakale, can we have

09:31:05 20 Mr. Villasenor's report, Paragraphs 15 and 16?

09:31:08 21 MR. SHEASBY: Your Honor, object. He can't

09:31:12 22 publish a report. That's hearsay. I -- I was not allowed

09:31:12 23 to publish it either. If he wants to show that report to

09:31:15 24 Mr. Saffici -- reports aren't evidence to be published with

09:31:17 25 the jury.

09:31:19 1 THE COURT: What's your response, Mr. Johnson?

09:31:21 2 MR. JOHNSON: I'm not offering it for the truth of  
09:31:23 3 the matter asserted. This has been discussed before the  
09:31:25 4 witness. I'm offering it for context of the testimony.

09:31:34 5 THE COURT: Approach the bench, counsel.

09:31:35 6 (Bench conference.)

09:31:42 7 THE COURT: I think you're going to have to refer  
09:31:44 8 the witness to the areas that you believe are appropriate  
09:31:49 9 under the doctrine of optional completeness, and if he says  
09:31:53 10 that additional text would cause him to change his answer,  
09:31:56 11 then you can publish it.

09:31:58 12 MR. SHEASBY: Your Honor, I'm concerned --

09:32:01 13 THE COURT: That's like impeachment in reverse.

09:32:02 14 MR. SHEASBY: I'm concerned that the suggestion  
09:32:04 15 that I didn't show it to the jury, I instructed him not to  
09:32:07 16 read it out loud because that would have been a violation  
09:32:09 17 of the Court's rulings.

09:32:12 18 THE COURT: That's not anything that rises to the  
09:32:13 19 level of an objection at this point.

09:32:15 20 MR. SHEASBY: Thank you, Your Honor.

09:32:15 21 THE COURT: Okay.

09:32:20 22 (Bench conference.)

09:32:22 23 THE COURT: Let's proceed.

09:32:26 24 MR. JOHNSON: May I approach, Your Honor, please?

09:32:28 25 THE COURT: You may.

09:32:30 1 Q. (By Mr. Johnson) Mr. Saffici, will you read the first

09:32:47 2 and the second sentence of Mr. Villasenor's Paragraph 16?

09:32:51 3 A. To myself?

09:32:52 4 Q. Yes.

09:33:06 5 A. I've read the first and second sentences.

09:33:09 6 Q. Do your answers -- do you -- are all your answers

09:33:14 7 regarding Mr. Villasenor's definition of person of ordinary

09:33:19 8 skill in the art and you, remain true, in light of the

09:33:23 9 second sentence?

09:33:25 10 A. No, they do not remain true.

09:33:28 11 MR. JOHNSON: May I now publish this to the jury,

09:33:30 12 Your Honor?

09:33:30 13 THE COURT: You can recover the document from the

09:33:32 14 witness.

09:33:32 15 MR. JOHNSON: Thank you. May I publish it?

09:33:42 16 THE COURT: You may.

09:33:43 17 MR. JOHNSON: Thank you, Your Honor.

09:33:44 18 Can we have it up? I don't want to...

09:33:49 19 Thank you.

09:33:50 20 Q. (By Mr. Johnson) So the jury is clear, Mr. Sheasby

09:33:53 21 read to you which -- or told you to read only which

09:33:56 22 first -- which sentence?

09:33:57 23 A. Paragraph 16, first sentence that ends there with the

09:34:01 24 word "imaging."

09:34:03 25 Q. Right. And then you all had a long colloquy about

09:34:08 1 others that might meet that, but did you get the

09:34:10 2 implication that he didn't think you met that?

09:34:13 3 A. Yes, definitely.

09:34:14 4 Q. Now, sir, can you read the second sentence that he

09:34:18 5 wouldn't let you read?

09:34:19 6 A. You want me to read it out loud?

09:34:22 7 Q. Yes, sir.

09:34:22 8 A. Oh. It says: More work experience could compensate

09:34:26 9 for less education, and vice versa.

09:34:29 10 Q. Now, Mr. Sheasby didn't read that sentence to you, did

09:34:36 11 he?

09:34:36 12 A. No, he did not.

09:34:38 13 Q. Mr. Sheasby [sic], do you think 53 years in the real

09:34:42 14 world would be more work experience that could accomplish

09:34:44 15 that --

09:34:44 16 THE COURT: Just a minute, counsel.

09:34:45 17 What are you up on your feet for, Mr. Sheasby.

09:34:45 18 MR. SHEASBY: Objection, this is leading, Your

09:34:55 19 Honor.

09:34:55 20 MR. JOHNSON: Given what has gone on, Your Honor,

09:34:58 21 I would ask for leniency.

09:35:02 22 THE COURT: Restate your question, Mr. Johnson.

09:35:04 23 Q. (By Mr. Johnson) Mr. Saffici, how many years of

09:35:09 24 real-world experience do you have?

09:35:10 25 A. 53.

09:35:10 1 Q. All in the areas that we're talking about?

09:35:12 2 A. That's correct.

09:35:13 3 Q. Okay. Can you tell the jury whether having 53 years  
09:35:18 4 experience might be a substitute, in your opinion, for all  
09:35:23 5 these college degrees that were talked about by  
09:35:25 6 Mr. Sheasby?

09:35:26 7 A. I believe it's fair to consider it as a substitute.

09:35:31 8 Q. And, sir, with the benefit -- and Mr. Sheasby -- did  
09:35:37 9 Mr. Sheasby beat you up about not meeting that definition?

09:35:40 10 MR. SHEASBY: Your Honor, objection. This is  
09:35:43 11 improper.

09:35:43 12 THE COURT: Sustained.

09:35:43 13 MR. SHEASBY: Absolutely improper.

09:35:44 14 THE COURT: That's inflammatory language that's  
09:35:48 15 not called for, Mr. Johnson.

09:35:50 16 MR. JOHNSON: I'll rephrase.

09:35:52 17 Q. (By Mr. Johnson) Did you get the impression that  
09:35:54 18 Mr. Sheasby was questioning your qualifications to sit on  
09:35:57 19 that stand, just based on reading that first sentence?

09:36:00 20 A. Yeah, I would say that's true.

09:36:03 21 Q. With the benefit of the whole definition, do you now  
09:36:06 22 believe you meet that definition, Mr. -- Dr. Villasenor set  
09:36:10 23 out?

09:36:11 24 A. I believe I do.

09:36:15 25 Q. Mr. Saffici, do you recall yesterday that you and I

09:36:20 1 discussed at length your experience in this industry?

09:36:23 2 A. Yes.

09:36:26 3 Q. Okay. And do you recall the part of the -- of the  
09:36:28 4 trial where I tendered you as an expert to the Court for  
09:36:31 5 approval?

09:36:32 6 A. Yes, I do.

09:36:34 7 Q. Do you recall, when asked for objections, what counsel  
09:36:37 8 for the Plaintiff said?

09:36:38 9 A. Yes, I do.

09:36:39 10 Q. What did he say?

09:36:41 11 A. He did not object.

09:36:43 12 Q. Do you have any idea why Mr. Sheasby would not have  
09:36:51 13 objected then and then try to do what he did with you with  
09:36:55 14 the definition?

09:36:56 15 MR. SHEASBY: Your Honor, objection, it's  
09:36:56 16 argumentative and it calls for -- calls for --

09:37:00 17 THE COURT: It calls for speculation about what  
09:37:01 18 was in Mr. Sheasby's mind. And Mr. Saffici, I'm sure, has  
09:37:05 19 no idea of what the answer to that is. That's an improper  
09:37:10 20 question, and I'll sustain.

09:37:12 21 MR. JOHNSON: I'll move on.

09:37:14 22 Q. (By Mr. Johnson) Now, Mr. Sheasby compared you with  
09:37:16 23 some of the other witnesses who have taken the stand; do  
09:37:20 24 you remember that?

09:37:20 25 A. Yes, I do.

09:37:20 1 Q. Do you recall he claimed Mr. Brady had given opinion  
09:37:24 2 testimony about whether the inventions at issue were  
09:37:26 3 described in the specifications?

09:37:28 4 A. Yes, I recall that.

09:37:29 5 Q. Can you tell the jury whether Mr. Brady is a -- an  
09:37:34 6 expert witness like you or a fact witness and corporate  
09:37:38 7 representative like Mr. Hecht?

09:37:38 8 A. He would be a fact --

09:37:40 9 MR. SHEASBY: Your Honor, objection. Can I  
09:37:43 10 approach?

09:37:44 11 THE COURT: Approach the bench, counsel.

09:37:45 12 (Bench conference.)

09:37:53 13 THE COURT: What's your objection?

09:37:54 14 MR. SHEASBY: Every single question that he's been  
09:37:56 15 asking for the last seven minutes has been a leading  
09:38:00 16 question. If I stand up every time and say leading, I'm  
09:38:03 17 going to get -- it's going to be very disruptive to the  
09:38:06 18 jury.

09:38:06 19 This is not a cross-examination. This is -- this  
09:38:08 20 is not a redirect examination. It's just him -- him  
09:38:10 21 leading the witness to say yes or no so he can make an  
09:38:13 22 argument. This is just -- this is completely improper.

09:38:17 23 MR. JOHNSON: Your Honor, I'm attempting to  
09:38:18 24 correct some severe misrepresentations by counsel about the  
09:38:21 25 content of factual testimony. And giving fact witnesses

09:38:25 1 the impromptu of an expert -- I would ask for leniency, but  
09:38:32 2 I will try to maintain.

09:38:33 3 THE COURT: I -- at this point, the only criticism  
09:38:39 4 I have of what Mr. Johnson is doing is the occasional use  
09:38:42 5 of inflammatory language like, beating you up. There's no  
09:38:46 6 place for that. I know what you're doing, I know why  
09:38:48 7 you're doing it, and I think you have a right to do it.  
09:38:51 8 There is a rule against leading questions. You'll just  
09:38:53 9 have to do the best you can.

09:38:54 10 MR. JOHNSON: Okay.

09:38:55 11 THE COURT: Let's proceed.

09:39:03 12 (Bench conference concluded.)

09:39:03 13 THE COURT: Let's proceed.

09:39:08 14 Q. (By Mr. Johnson) Mr. Saffici, do you know if Mr. Brady  
09:39:11 15 ever submitted an expert report in this case?

09:39:14 16 A. I really don't know one way or the other.

09:39:16 17 Q. Is Mr. Brady an inventor on these patents?

09:39:19 18 A. I don't recall. He indicated he was.

09:39:24 19 Q. In fact, have we seen any of the inventors -- you've  
09:39:29 20 been here the whole trial?

09:39:30 21 A. Yes.

09:39:30 22 Q. Have we seen any of the inventors take the stand like  
09:39:34 23 you are?

09:39:34 24 A. Not take the stand, no.

09:39:36 25 Q. And, sir, do you think in your work if Mr. Brady had



09:39:42 1 done an expert report, is that something you would have  
09:39:46 2 considered as a part of your work?

09:39:47 3 A. Yes, I would.

09:39:48 4 Q. Did you ever see --

09:39:51 5 A. I'm sorry.

09:39:52 6 Q. Did you ever see an expert report by Mr. Brady?

09:39:55 7 A. No, I didn't.

09:39:56 8 Q. And did you see Mr. Brady ever qualified as an expert  
09:40:06 9 the way you were?

09:40:07 10 A. No, I don't believe the qualification was there when he  
09:40:11 11 was on the stand.

09:40:12 12 Q. You have worked on this case how long, sir?

09:40:17 13 A. About 11 months.

09:40:24 14 Q. Okay. Now, in Paris, where I come from, I've heard the  
09:40:30 15 phrase, show your work. Have you heard that phrase?

09:40:32 16 A. Yes, I believe I've heard that, yeah.

09:40:34 17 Q. Did you do -- did you show your work in this case?

09:40:37 18 A. I believe I did.

09:40:38 19 Q. Did you draft -- did you do that by writing a report?

09:40:40 20 A. Yes, that's correct.

09:40:41 21 Q. And have we been talking about the report?

09:40:45 22 A. Yes, we have.

09:40:46 23 Q. Okay. Is this a copy of it?

09:40:48 24 A. I believe that is.

09:40:52 25 Q. How long is the expert report that you wrote in this

09:40:55 1 case?

09:40:55 2 A. I don't have that memorized, but --

09:41:00 3 Q. Estimate?

09:41:02 4 A. I don't know, several hundred pages, I believe.

09:41:04 5 Q. 453 sound about right?

09:41:06 6 A. Yeah, that's right, that's right.

09:41:08 7 Q. How many hours of deposition did you have to sit  
09:41:13 8 through defending your expert report?

09:41:15 9 A. Oh, probably, between the two reports, about 12, I  
09:41:22 10 guess; 12, 13.

09:41:24 11 Q. And, sir, who do you recall wrote the report for  
09:41:32 12 Plaintiffs to respond to your report?

09:41:36 13 A. Mr. Calman.

09:41:37 14 Q. Okay. So Mr. Calman was the person on the Plaintiff's  
09:41:41 15 side to respond to you, not Mr. Brady or Dr. Conte?

09:41:45 16 A. That's correct.

09:41:48 17 Q. Did you ever see an expert report from Dr. Conte, who  
09:41:53 18 counsel represented gave testimony on written description?  
09:41:56 19 Did he -- did you ever see a report by him on your issues?

09:42:02 20 A. No, I didn't.

09:42:03 21 Q. Now, Mr. Calman -- have we even seen Mr. Calman darken  
09:42:09 22 the doors of this courthouse?

09:42:11 23 MR. SHEASBY: Your Honor, objection, this is  
09:42:12 24 argumentative and improper language before the Court.

09:42:16 25 THE COURT: Overruled. You may answer the

09:42:18 1 question, Mr. Saffici.

09:42:19 2 A. No, I haven't seen Mr. Calman this week.

09:42:30 3 Q. (By Mr. Johnson) Mr. Saffici, I'd like to talk to you  
09:42:48 4 really briefly about some of the other issues counsel has  
09:42:51 5 tried to talk with you about in the context of what we've  
09:42:54 6 been discussing.

09:42:58 7 MR. JOHNSON: If we could pull up the '681 spec,  
09:43:03 8 Paragraphs 4, 11 through 34, that you were discussing.

09:43:25 9 I'm sorry, Mr. Bakale, I think I've got the  
09:43:29 10 wrong -- written down the wrong cite. Actually, Lines 37  
09:43:39 11 through 49.

09:43:45 12 Q. (By Mr. Johnson) Is this what you were discussing with  
09:43:46 13 counsel earlier?

09:43:47 14 A. Yes, that's the section.

09:43:48 15 Q. And do you recall where you said that you gave a  
09:43:53 16 different answer in your -- in your deposition about  
09:44:01 17 whether or not these had to be -- whether there's a  
09:44:05 18 limitation on -- whether these could be in the same box, I  
09:44:09 19 believe is the phrase?

09:44:10 20 A. Yes.

09:44:12 21 Q. Okay. Now, Mr. Saffici, do you analyze the con --  
09:44:17 22 the -- the specification just in a -- in a single  
09:44:21 23 paragraph, or do you look at it in the whole context?

09:44:24 24 A. I look at it in the whole context.

09:44:27 25 Q. Okay. And can you explain why your answer was

09:44:29 1 different about whether they could be in the same box, the  
09:44:34 2 image capture device and general purpose computer, at your  
09:44:36 3 deposition in context of the whole specification?

09:44:40 4 A. Well, because other areas in the specification also  
09:44:44 5 talk about the devices and show them as being separate.

09:44:49 6 Q. Including, for instance, this line, sir?

09:44:54 7 A. Yes, that's one of them.

09:44:56 8 Q. And the fact that it's telling you --

09:45:01 9 A. Scanner or digital camera, yes.

09:45:03 10 Q. In fact, does the specification ever show you an  
09:45:10 11 example system of putting the general purpose computer and  
09:45:13 12 the image capture device in the same box and using that for  
09:45:17 13 check deposit or check imaging?

09:45:20 14 A. I did not find that in the specification.

09:45:26 15 Q. You were asked some questions about PDAs. Do you  
09:45:28 16 recall that?

09:45:29 17 A. Yes.

09:45:30 18 Q. Now, we went over this in some detail yesterday, but in  
09:45:35 19 arriving at written description opinions, do you go out and  
09:45:41 20 analyze what the market was, or do you look at something  
09:45:45 21 else?

09:45:45 22 A. I looked at the specification.

09:45:47 23 Q. Regardless of what the market was having, what is the  
09:45:51 24 invention limited to?

09:45:52 25 A. The invention was limited to a general purpose computer

09:45:57 1 with a separate capture device.

09:46:03 2 MR. JOHNSON: Let's look at the '605 patent,  
09:46:05 3 Paragraph -- or Column 8, Lines 3 through 17.

09:46:09 4 Q. (By Mr. Johnson) Does -- did the inventors describe in  
09:46:23 5 the specification PDAs in a way to one of skill in the art  
09:46:26 6 who would indicate they are used in check processing?

09:46:29 7 A. No, there's no description to that effect.

09:46:31 8 Q. Remind the jury in the context of this patent what's  
09:46:35 9 being described.

09:46:37 10 A. Again, this portion of the specification is referring  
09:46:40 11 to Figure 4, the exemplary network or distributed computing  
09:46:46 12 environment. And it talked about these numbers -- 400s  
09:46:50 13 here as being types -- just describing devices that can be  
09:46:54 14 on that network.

09:46:55 15 And then further down here, it talked about same  
09:46:59 16 or different devices, such as -- and that's where it  
09:47:02 17 enumerated the PDA, the audio/video -- audio/video devices,  
09:47:09 18 MP3 player, personal computer, et cetera.

09:47:12 19 Q. Does the patent disclose how an MP3 player can be used  
09:47:21 20 in check processing?

09:47:22 21 A. No, it doesn't.

09:47:23 22 Q. Treat it the same as a PDA?

09:47:25 23 A. I took it, because they're all similar here, that they  
09:47:28 24 were treated in the same way.

09:47:33 25 Q. Can we look at -- anything about your discussion with

09:47:36 1 counsel that changes your opinion about whether the  
09:47:39 2 discussion of PDAs in the patents supports written  
09:47:41 3 description of the full scope of the claims?

09:47:43 4 A. Nothing changes them.

09:47:45 5 Q. Okay. I want to look at your discussion at Figure 3,  
09:47:47 6 and I think that's Column 6, Lines 39 through 55.

09:48:01 7 Is this a section of the specification you were  
09:48:07 8 discussing regarding the internal workings of the camera?  
09:48:11 9 Do you recall that?

09:48:11 10 A. Yes.

09:48:12 11 Q. And that's seen -- the jury can see that in Figure 3?

09:48:16 12 A. Right.

09:48:17 13 Q. Now, is there a discussion here regarding the coupling  
09:48:22 14 between the camera or image capture and the general purpose  
09:48:29 15 computer, or is this solely about the camera?

09:48:32 16 A. Well, it's talking about the image capture device.

09:48:37 17 Q. Okay. Now, is the only discussion -- will you look  
09:48:46 18 here at the last line? And what it says about the  
09:48:52 19 communication connections that were discussed up here in  
09:48:56 20 the processors that you discussed with counsel, what does  
09:48:59 21 it say about those?

09:49:00 22 A. Right. It says that the communications -- the  
09:49:04 23 connection, which refers to it as 308, can serve to  
09:49:09 24 communicatively couple the device to a general purpose  
09:49:12 25 computer as described in Figure 2.

09:49:18 1 MR. JOHNSON: Can we see Figure 3, Mr. Bakale?

09:49:23 2 Q. (By Mr. Johnson) Does Figure 3 have anything to do  
09:49:35 3 with a discussion of the general purpose computer being  
09:49:39 4 linked to the camera in the way that the claims require?

09:49:42 5 A. No, this figure is just showing that image capture  
09:49:46 6 device itself, not a general purpose computer.

09:49:55 7 Q. Mr. Saffici, I would now like to -- do you remember  
09:50:05 8 when -- now, I'd like to turn to -- to discussions with  
09:50:08 9 counsel about what you could learn -- remember the  
09:50:12 10 discussions about what you could learn from the '227 -- the  
09:50:16 11 '200 specification and the '681 specification, that they  
09:50:19 12 were the same thing?

09:50:20 13 A. Yes.

09:50:21 14 Q. And in that discussion, counsel referred you to some  
09:50:28 15 deposition testimony at Page 9. Let me get that for us.

09:50:36 16 MR. JOHNSON: Your Honor, I apologize. We have a  
09:50:39 17 little water spill from Mr. Sheasby's water.

09:50:56 18 Q. (By Mr. Johnson) And I believe he referred you to  
09:50:58 19 Page 9 --

09:50:59 20 MR. JOHNSON: Thank you so much.

09:51:10 21 Q. (By Mr. Johnson) -- Page 9, Line 22, through 10:10.

09:51:22 22 MR. JOHNSON: May I have the camera or can you --  
09:51:24 23 okay. Thank you.

09:51:25 24 Q. (By Mr. Johnson) Now, down here, sir, is what he  
09:51:27 25 referred you to and asked you questions about in terms

09:51:30 1 of -- that all the elements of those claims are described  
09:51:34 2 in the Oakes '200 patent, referring to the '681. Do you  
09:51:37 3 recall that?

09:51:38 4 A. Yes.

09:51:38 5 Q. And you agreed that they are, right, sir?

09:51:42 6 A. I did.

09:51:42 7 Q. Okay. Now, you have two opinions in this case?

09:51:49 8 A. Yes, I do.

09:51:50 9 Q. What are those areas?

09:51:51 10 A. Written description and anticipation.

09:51:54 11 Q. Did we cover in your direct that those have very  
09:51:58 12 different legal standards, very different things that you  
09:52:01 13 look at?

09:52:02 14 A. Yes, that's correct.

09:52:03 15 Q. Okay. In context of this quote, sir, what were you  
09:52:07 16 discussing with Mr. Sheasby at the deposition when you gave  
09:52:11 17 this testimony?

09:52:12 18 A. Anticipation.

09:52:13 19 Q. Okay. And can we see that, if we just looked a few  
09:52:16 20 lines up from where he was directing you?

09:52:18 21 A. Yes, we can.

09:52:19 22 Q. How do we do that, sir?

09:52:21 23 A. Well, Mr. Sheasby had pointed me to Paragraph 246 in my  
09:52:26 24 report.

09:52:28 25 Q. Okay. And if you look in your report, sir, what



09:52:32 1 section -- you don't have to look at it unless you need to.

09:52:35 2 A. Oh.

09:52:35 3 Q. What section of your report, in terms of opinions, is

09:52:38 4 Section 246 in?

09:52:39 5 A. Part of Section B, which was showing the anticipation

09:52:43 6 of the Oakes '200 to the '681.

09:52:47 7 Q. Anything about this testimony or that part of the

09:52:51 8 report that has anything to do with written description

09:52:53 9 opinions?

09:52:54 10 A. No, it does not.

09:52:56 11 Q. Were you asked the same questions about the '605 patent

09:53:09 12 specification?

09:53:10 13 A. Yes.

09:53:11 14 Q. And did you say that all elements -- in your

09:53:14 15 deposition, all elements of the '605 patent are described

09:53:18 16 in the Oakes '200 -- or, sorry, '227?

09:53:25 17 A. Yes, I did.

09:53:25 18 Q. And when counsel was having that colloquy with you and

09:53:30 19 talking about it, what area of the opinion did that

09:53:34 20 testimony have to deal with?

09:53:35 21 A. We were still within Section B -- sorry, it wasn't B at

09:53:39 22 that point. It was still anticipation.

09:53:41 23 Q. Anything about that deposition testimony that bears on

09:53:45 24 written description?

09:53:46 25 A. No, it doesn't.

09:53:47 1 Q. In fact, sir, what is the difference between  
09:53:52 2 anticipation and written description in terms of whether  
09:53:54 3 you have to find everything in a patent or an example?

09:53:56 4 A. With written description, as we spoke yesterday, the  
09:54:04 5 specification must describe all the ways that the claims  
09:54:10 6 say that the invention works.

09:54:13 7 With anticipation, a prior art only needs to  
09:54:16 8 identify one of the ways in which the claims of a patent  
09:54:22 9 work.

09:54:26 10 Q. Mr. Saffici, when you gave -- were talking about the  
09:54:34 11 descriptions of elements in your testimony -- in your  
09:54:39 12 deposition with counsel, what were you referring to in  
09:54:42 13 terms of anticipation?

09:54:42 14 A. That only one of the ways -- ask your question again,  
09:54:50 15 Mr. Johnson, before I --

09:54:51 16 Q. When you were -- when you were having these discussions  
09:54:54 17 with counsel that ends up were about anticipation and not  
09:54:57 18 written description, what were you referring to?

09:54:59 19 A. Oh. Well, I was referring to the -- to the rule around  
09:55:02 20 anticipation that the specification would identify one of  
09:55:07 21 the ways in which the claims work.

09:55:10 22 Q. Do you recall discussions with counsel about  
09:55:16 23 Paragraph 209 of your report?

09:55:18 24 A. 209?

09:55:20 25 Q. Can you go there?

09:55:20 1 A. Yes, let me go there. Oh, yes.

09:55:26 2 MR. JOHNSON: Mr. Bakale, can we have on the  
09:55:27 3 screen the Oakes '227, which I believe is -- yes, the  
09:55:40 4 patent. Defense Exhibit 5. Can we go to Paragraph 4, 30  
09:55:52 5 through 34? Sorry, Column 4, Line 30 to 34.

09:56:12 6 Q. (By Mr. Johnson) In your report when you're talking  
09:56:19 7 about a customer can use a general purpose computer that  
09:56:22 8 couples to image capture devices, is this part of the  
09:56:26 9 specification that would inform that opinion?

09:56:29 10 A. Yes, in the '227.

09:56:34 11 Q. What are the examples of image capture devices that can  
09:56:39 12 easily be coupled to or be -- what are the examples of the  
09:56:55 13 image capture devices used in the -- in the context of the  
09:56:58 14 specification?

09:56:58 15 A. It talks about a scanner and digital camera.

09:57:03 16 Q. And does that inform your reading of Columns 3, 59  
09:57:09 17 through 64, that you were discussing in Paragraph 10 -- 209  
09:57:14 18 of your pat -- of your report?

09:57:15 19 A. Yes, it does.

09:57:16 20 Q. Do you stand by your opinion that the patent does not  
09:57:35 21 teach general purpose computer with a cam -- with a camera  
09:57:41 22 in a single unit?

09:57:43 23 A. I -- I do stand by my opinion.

09:57:50 24 MR. JOHNSON: May I have a moment, Your Honor?

09:57:52 25 THE COURT: You may.

09:58:01 1 Q. (By Mr. Johnson) Now, at the end of the day, sir,  
09:58:04 2 yesterday, Mr. Sheasby and you were discussing your  
09:58:07 3 deposition testimony about mobile devices and the  
09:58:09 4 specification. Do you recall that?

09:58:10 5 A. Yes.

09:58:15 6 MR. JOHNSON: And may I have the camera?

09:58:17 7 Q. (By Mr. Johnson) Mr. Sheasby asked you to look at  
09:58:23 8 Line -- at Page 51 of your deposition, and you did that,  
09:58:26 9 right, sir?

09:58:27 10 A. Yes.

09:58:28 11 Q. And what question did he ask you at Line 23?

09:58:33 12 A. So your testimony under oath at that time was that the  
09:58:39 13 specification of the patents-in-suit describe mobile  
09:58:42 14 devices, correct?

09:58:47 15 Q. And was that your testimony at Paragraph -- at Page 51,  
09:58:51 16 Lines 5 through 10?

09:58:52 17 A. I believe, yes, it was.

09:59:06 18 MR. JOHNSON: Sorry, Your Honor.

09:59:16 19 Q. (By Mr. Johnson) Let's look at that.

09:59:20 20 Question at line 5: Do you stand by the fact that  
09:59:43 21 the specifications of the patent --

09:59:43 22 THE COURT: Slow down, Mr. Johnson.

09:59:46 23 MR. JOHNSON: Sorry, Your Honor. It's contagious.

09:59:48 24 THE COURT: Well, you caught it.

09:59:50 25 Q. (By Mr. Johnson) Do you stand by the fact that the

09:59:55 1 specifications of the patent describe as being -- as mobile  
09:59:59 2 devices being within the scope of the purported invention?

10:00:03 3 What did you answer?

10:00:05 4 A. Read it out loud?

10:00:07 5 Q. Yes.

10:00:08 6 A. I did when I wrote this, so my opinion stays the same.

10:00:12 7 Q. Is there any mention of camera in that section of your  
10:00:16 8 testimony?

10:00:17 9 A. No, there isn't.

10:00:21 10 Q. Yesterday, in the following questions after that  
10:00:24 11 initial question that we looked at, Mr. Sheasby had  
10:00:30 12 follow-up and confirmed: Do you stand by the fact that the  
10:00:34 13 specifications of the patent describe as being -- as mobile  
10:00:38 14 devices being within the scope of the purported invention?

10:00:41 15 What did you respond to it?

10:00:42 16 A. I don't believe I have reason to change that opinion.

10:00:45 17 Q. Right. Anything in that about cameras?

10:00:49 18 A. No.

10:00:49 19 Q. And was there anything in your testimony that you all  
10:00:53 20 were referring to about cameras?

10:00:54 21 A. No, there wasn't.

10:00:55 22 Q. Sorry, this is the testimony -- the trial testimony.

10:01:13 23 Did you continue to refer to the deposition  
10:01:15 24 testimony we've been referring to, in your questioning at  
10:01:17 25 the end of the day?

10:01:18 1 A. Yes, it was continued.

10:01:20 2 Q. Now, in the last question, what does Mr. Sheasby ask  
10:01:25 3 you?

10:01:27 4 A. Sir, the specifications of the patents in this case  
10:01:31 5 disclose the use of mobile devices with digital cameras,  
10:01:36 6 correct? That's what you testified to previously.

10:01:39 7 Q. Now, was that phrase "with digital cameras" in any of  
10:01:45 8 the deposition testimony that you all had been referring?

10:01:48 9 A. No, it was not.

10:01:48 10 Q. Who put that in there?

10:01:50 11 A. Mr. Sheasby.

10:01:53 12 Q. And is that your testimony at deposition or at trial?

10:01:58 13 A. No, it wasn't.

10:01:59 14 Q. Did you feel a little misled, sir?

10:02:01 15 A. Yes, I did.

10:02:03 16 MR. JOHNSON: May I have a moment, Your Honor?

10:02:05 17 THE COURT: You may.

10:02:21 18 MR. JOHNSON: Mr. Bakale, can I have Slide 69,  
10:02:26 19 please?

10:02:26 20 Q. (By Mr. Johnson) Mr. Saffici, what have you concluded  
10:02:35 21 about the '605 patent after your 453 page report, hours of  
10:02:40 22 deposition, and your testimony here today?

10:02:41 23 A. My conclusion remains that the '605 patent first lacks  
10:02:47 24 written description, and, second, is anticipated by the  
10:02:50 25 Oakes '227 patent.

10:02:54 1 Q. Because of the written description, what priority date  
10:02:56 2 applies to the '605 patent?

10:02:58 3 A. The '605 patent then would get the priority date of  
10:03:02 4 July 28th, 2017.

10:03:06 5 Q. Does the full -- does the written description disclosed  
10:03:09 6 to you, as one of skill in the art, that the full scope of  
10:03:12 7 the invention was disclosed in the written description?

10:03:14 8 A. It was not disclose -- fully disclosed.

10:03:17 9 Q. As to the '681 patent, sir, what are your opinions?

10:03:21 10 A. My opinions are still that the '681 patent lacks  
10:03:25 11 written description and, secondarily, is anticipated by the  
10:03:29 12 Oakes '200 patent.

10:03:31 13 Q. And what priority date would apply to the '681 patent?

10:03:34 14 A. The priority date then would change to July 28th, 2017.

10:03:37 15 Q. And does the written description indicate to you as one  
10:03:40 16 of skill in the art that the inventors possessed and  
10:03:44 17 disclosed the full scope of the claims in this case for the  
10:03:47 18 '681 patent?

10:03:47 19 A. They do not provide full scope disclosure.

10:03:50 20 Q. And do your opinions apply both to the independent and  
10:03:53 21 dependent claims at issue in this case?

10:03:54 22 A. Yes, they do.

10:04:00 23 MR. JOHNSON: Moment, Your Honor?

10:04:01 24 THE COURT: One more time, Mr. Johnson.

10:04:03 25 MR. JOHNSON: Thank you.

10:04:05 1 Pass the witness, Your Honor.

10:04:08 2 THE COURT: Counsel, approach the bench, please.

10:04:12 3 (Bench conference.)

10:04:15 4 THE COURT: Any estimate on your additional cross  
10:04:20 5 time?

10:04:20 6 MR. SHEASBY: Seven minutes.

10:04:21 7 THE COURT: Okay. Let's go.

10:04:23 8 (Bench conference concluded.)

10:04:34 9 THE COURT: All right. We'll proceed with  
10:04:37 10 additional cross-examination by the Plaintiff.

10:04:39 11 When you're ready, Mr. Sheasby.

10:04:39 12 RECROSS-EXAMINATION

10:04:41 13 BY MR. SHEASBY:

10:04:41 14 Q. Mr. Saffici, you have extraordinary experience in  
10:04:45 15 remote deposit capture, correct?

10:04:46 16 A. I believe so.

10:04:48 17 Q. But, Mr. Saffici, you were not hired as a technical  
10:04:53 18 expert in this case, correct?

10:04:54 19 A. That's absolutely correct.

10:04:56 20 Q. Mr. Saffici, you have extraordinary experience in  
10:05:00 21 remote deposit capture, but you have no technical  
10:05:03 22 experience actually designing mobile remote deposit capture  
10:05:06 23 systems, correct?

10:05:08 24 A. Designing from a technical point, I would agree.

10:05:11 25 Q. Mr. Saffici, you are an extraordinarily experienced



10:05:18 1 individual, and you have the ability to analyze the value  
10:05:20 2 of an MRDC system, correct?

10:05:22 3 A. Yes, I could evaluate it.

10:05:26 4 Q. But the one thing that you didn't do in this trial is  
10:05:31 5 evaluate the value of USAA's patents, correct?

10:05:33 6 A. Because I wasn't asked to.

10:05:39 7 Q. And, Mr. Saffici, there's a presumption of validity  
10:05:43 8 that is associated with the patents in this case, correct?

10:05:46 9 A. Say it again, please.

10:05:48 10 Q. There's a presumption of validity that is associated  
10:05:51 11 with the patents in this case, correct?

10:05:52 12 A. The fact that the patent was granted, yes.

10:05:55 13 Q. And the jury must find by clear and convincing evidence  
10:05:58 14 that the patent was -- is invalid, correct?

10:06:02 15 A. That is correct.

10:06:02 16 Q. And that's a dramatically different standard from the  
10:06:05 17 standard for infringement, correct, sir?

10:06:10 18 MR. JOHNSON: Your Honor, I would object to the  
10:06:13 19 use of the phrase "dramatically." The Court will obviously  
10:06:17 20 instruct that it's a different standard.

10:06:19 21 THE COURT: Rephrase the question, Mr. Sheasby.

10:06:21 22 Q. (By Mr. Sheasby) The standard for clear and convincing  
10:06:23 23 evidence is significantly higher than the standard of  
10:06:28 24 preponderance of the evidence, correct, sir?

10:06:30 25 A. Since I didn't work on any of the infringement side of

10:06:33 1 it, I'm not in the position to really respond.

10:06:36 2 Q. Mr. Saffici, thank you for your time these last two  
10:06:40 3 days.

10:06:41 4 MR. SHEASBY: I pass the witness, Your Honor.

10:06:43 5 THE WITNESS: Thank you.

10:06:43 6 THE COURT: Redirect?

10:06:45 7 MR. JOHNSON: No, Your Honor.

10:06:45 8 THE COURT: You may step down, Mr. Saffici.

10:06:48 9 THE WITNESS: Thank you, Your Honor.

10:06:49 10 THE COURT: You're welcome.

10:06:50 11 Ladies and gentlemen, we're going to take a short  
10:06:53 12 recess at this time. You may close and leave your  
10:06:56 13 notebooks in your chairs. Follow all the instructions I've  
10:06:58 14 given you, including not to discuss the case among  
10:07:00 15 yourselves. And we'll be back shortly to continue with the  
10:07:03 16 next witness for the Defendants.

10:07:05 17 The jury is excused for recess at this time.

10:07:08 18 COURT SECURITY OFFICER: All rise.

10:07:09 19 (Jury out.)

10:07:32 20 THE COURT: The Court stands in recess.

10:28:44 21 (Recess.)

10:28:45 22 (Jury out.)

10:28:46 23 COURT SECURITY OFFICER: All rise.

10:28:49 24 THE COURT: Be seated, please.

10:28:50 25 I understand Defendants have a witness or

10:29:12 1 witnesses by deposition at this juncture; is that correct?

10:29:15 2 MR. MELSHEIMER: It is correct, Your Honor.

10:29:17 3 THE COURT: All right. How many witnesses by  
10:29:18 4 deposition do you have?

10:29:19 5 MR. MELSHEIMER: I believe we have three witnesses  
10:29:21 6 by deposition at this time, Your Honor, and then a live  
10:29:23 7 witness.

10:29:25 8 THE COURT: And the approximate time on those  
10:29:27 9 three deposition witnesses?

10:29:28 10 MR. MELSHEIMER: I believe it's about 20 minutes  
10:29:31 11 or so.

10:29:31 12 THE COURT: All right. All right. I'll bring in  
10:29:34 13 the jury, and we'll proceed with your first deposition  
10:29:36 14 witness.

10:29:36 15 MR. MELSHEIMER: Thank you, Your Honor.

10:29:37 16 THE COURT: Let's bring in the jury, please.

10:29:45 17 COURT SECURITY OFFICER: All rise.

10:29:47 18 (Jury in.)

10:30:04 19 THE COURT: Please be seated.

10:30:05 20 Defendant, call your next witness.

10:30:13 21 MS. WILLIAMS: Thank you, Your Honor.

10:30:18 22 Defendant calls Mr. Greg Harpel by deposition, a  
10:30:25 23 USAA employee and inventor.

10:30:27 24 THE COURT: All right. Proceed with the witness  
10:30:29 25 by deposition.

10:30:30 1 (Videoclip played.)

10:30:31 2 QUESTION: Can you please state your name for the  
10:30:33 3 record?

10:30:33 4 ANSWER: Greg Harpel.

10:30:35 5 QUESTION: When did you retire?

10:30:37 6 ANSWER: October of 2015.

10:30:41 7 QUESTION: Who did -- what company did you retire  
10:30:47 8 from?

10:30:47 9 ANSWER: USAA, or United Services Automobile  
10:30:48 10 Association.

10:30:48 11 QUESTION: What was your first involvement with  
10:30:55 12 USAA's banking business?

10:31:03 13 ANSWER: I worked -- the group that I was working  
10:31:09 14 for or working with had responsibility for managing  
10:31:13 15 research projects. The -- I was assigned a research  
10:31:19 16 project that was in the banking division.

10:31:27 17 QUESTION: What time frame was this?

10:31:28 18 ANSWER: That would have been about 2005.

10:31:32 19 QUESTION: Did the product that this project  
10:31:36 20 eventually became, did that have a commercial name that it  
10:31:39 21 was sold or distributed under?

10:31:41 22 ANSWER: The initial name was called Deposit@Home.

10:31:45 23 QUESTION: Okay. So this process flow was sort of  
10:31:48 24 an overview of how the entire system would work and how you  
10:31:52 25 could link it into USAA's existing banking system?

10:31:57 1 ANSWER: Correct.

10:31:57 2 QUESTION: So parts of the diagram were  
10:31:59 3 conventional banking processes that USAA already had for  
10:32:03 4 other purposes, and parts were things that you needed to  
10:32:06 5 modify for this project?

10:32:08 6 ANSWER: Correct.

10:32:08 7 QUESTION: What parts did you need to modify?

10:32:11 8 ANSWER: I don't really know. I mean, that would  
10:32:15 9 be -- the parts that would be early on, the image capture  
10:32:21 10 part would be the primary. After that, I don't really know  
10:32:25 11 how it all flowed through. That's not my area of expertise  
10:32:34 12 at all.

10:32:35 13 QUESTION: So other than the image capture piece,  
10:32:37 14 is there anything you can recall today that needed to be  
10:32:42 15 changed in order to make this research project work?

10:32:46 16 ANSWER: To -- to the best of my knowledge, it  
10:32:49 17 could plug into our -- our existing systems. Now I do  
10:32:55 18 recall, though, that we had bank people that had to  
10:32:58 19 evaluate what was being done and to see if it -- if it  
10:33:06 20 had -- if changes were required. But I don't specifically  
10:33:09 21 recall any -- any that had changes required.

10:33:15 22 QUESTION: All right. How long did you work on  
10:33:17 23 this project relating to remote deposit capture?

10:33:25 24 ANSWER: I'd say probably a total of two and a  
10:33:28 25 half months.

10:33:28 1 QUESTION: After you left the project in either  
10:33:32 2 2005 or 2006, did you have any further involvement with  
10:33:36 3 USAA's remote deposit capture efforts?

10:33:38 4 ANSWER: No.

10:33:44 5 QUESTION: Do your patents describe any computing  
10:33:50 6 device with a camera integrated into the same device as the  
10:33:55 7 computer processor?

10:33:57 8 ANSWER: Do my patents? You mean -- you mean '605  
10:34:01 9 in particular?

10:34:03 10 QUESTION: Yes, either of the two patents that you  
10:34:04 11 have in front of you, the '605 or the '227 patent. Do  
10:34:09 12 either of those patents describe any computing device with  
10:34:15 13 a camera integrated into the same device as the computer  
10:34:18 14 processor?

10:34:18 15 ANSWER: A computing device, not that I'm aware  
10:34:22 16 of.

10:34:22 17 QUESTION: So I believe the way you just phrased  
10:34:25 18 it was, is there a difference between the portable device  
10:34:29 19 comprising a general purpose computer and the digital  
10:34:32 20 camera?

10:34:32 21 ANSWER: Yes, there is a difference.

10:34:33 22 QUESTION: What's the difference?

10:34:34 23 ANSWER: The digital camera is physically separate  
10:34:44 24 from the portable device, and the digital camera is the  
10:34:47 25 image capture. But there -- there must be some

10:34:51 1 communication pathway, whether it be a wire or through some  
10:34:59 2 technology, like Bluetooth or something, to communicate  
10:35:04 3 from the digital camera to the portable device.

10:35:06 4 QUESTION: All right. Can you take a look at  
10:35:10 5 Claim 12, which starts in Column 16, Line 30 and read  
10:35:16 6 through Line 34, please?

10:35:20 7 ANSWER: Okay. So that -- that's implying to me  
10:35:24 8 that the phrase -- the term "system," which is what's  
10:35:27 9 referred to in Claim 12, system includes both the digital  
10:35:33 10 camera and the portable device.

10:35:36 11 QUESTION: Okay. And to be clear, in Claim 12 the  
10:35:41 12 language that's actually used in the claims is handheld  
10:35:44 13 mobile device, correct?

10:35:45 14 ANSWER: System for allowing the customer to  
10:35:47 15 deposit a check... using a customer's own handheld mobile  
10:35:52 16 device with a digital camera.

10:35:55 17 QUESTION: Okay. And now I want to ask the same  
10:35:59 18 question I asked about Claim 1.

10:36:01 19 Is there a difference between the handheld mobile  
10:36:03 20 device and the digital camera in Claim 12?

10:36:05 21 ANSWER: Difference between the handheld mobile  
10:36:12 22 device and the camera. Okay. In -- in Claim 12, where it  
10:36:21 23 says, using a customer's own handheld mobile device with a  
10:36:25 24 digital camera, that sounds to me like the -- whatever a  
10:36:30 25 handheld mobile device would be, could either be a camera

10:36:37 1 itself or could be some device within -- with a camera  
10:36:42 2 inside it. That's what I get out of Claim 12.

10:36:48 3 QUESTION: Is there any example described in the  
10:36:53 4 specification of the '605 patent of a handheld mobile  
10:36:57 5 device with a digital camera integrated into the mobile  
10:37:02 6 device?

10:37:02 7 ANSWER: Well, right in that -- in that paragraph  
10:37:04 8 you're referring to, it says, using a customer's own  
10:37:09 9 handheld mobile device with a digital camera.

10:37:14 10 So that, to me, says -- that implies that the  
10:37:17 11 handheld mobile device may have a camera with it, installed  
10:37:21 12 in it, or as a part of it. Integrated into it would be  
10:37:27 13 right.

10:37:27 14 QUESTION: Okay. I'm trying to ask not about the  
10:37:30 15 claim language. So when I'm asking about the  
10:37:32 16 specification, I mean the text -- the two columns of text  
10:37:35 17 starting at Column 1 and continuing through Column 15,  
10:37:38 18 Line 6.

10:37:39 19 So with that understanding of the specification,  
10:37:44 20 is there any part of that specification, those  
10:37:49 21 approximately 15 columns of text, that describe a handheld  
10:37:58 22 mobile device with an integrated digital camera?

10:37:58 23 ANSWER: Not that I know of, but I -- I don't  
10:38:03 24 know. I don't know one way or the other because I don't --  
10:38:07 25 I don't know what's in this 15 pages of text.



10:38:13 1 You're talking about something that's 10 years ago  
10:38:16 2 or 12 years ago, whatever. Sorry, I didn't memorize 12 --  
10:38:22 3 12 pages of text.

10:38:24 4 QUESTION: Are you familiar with USAA's check  
10:38:32 5 deposit processes that existed before Deposit@Home was  
10:38:40 6 released?

10:38:40 7 ANSWER: Only in very vague terms. Very high  
10:38:44 8 level. Definitely don't know the details of their check  
10:38:46 9 processing, no.

10:38:47 10 QUESTION: And with that understanding, was  
10:38:51 11 validating a routing number a part of USAA's existing  
10:38:54 12 systems before it released Deposit@Home?

10:38:56 13 ANSWER: I would think it would be a part of their  
10:39:01 14 system, yes. You'd have to identify that the check was  
10:39:04 15 being presented to the correct bank.

10:39:06 16 QUESTION: That would also be a standard process  
10:39:09 17 in the banking industry generally, correct?

10:39:11 18 ANSWER: Correct.

10:39:12 19 (Videoclip ends.)

10:39:13 20 THE COURT: Does that conclude this witness by  
10:39:17 21 deposition?

10:39:19 22 MS. WILLIAMS: Yes, Your Honor, it does.

10:39:21 23 THE COURT: Please proceed with your next witness.

10:39:23 24 MS. WILLIAMS: Thank you, Your Honor.

10:39:23 25 Defendants call Troy -- Mr. Troy Huth by

10:39:29 1 deposition, another USAA inventor.

10:39:31 2 THE COURT: Please proceed.

10:39:34 3 (Videoclip played.)

10:39:35 4 QUESTION: Good morning. Could you please state  
10:39:40 5 your name for the jury?

10:39:41 6 ANSWER: Yes, it's Troy Bartlette Huth.

10:39:44 7 QUESTION: And in 1998, when you left Bank of  
10:39:47 8 America, what did you do next?

10:39:49 9 ANSWER: I -- that's when I joined USAA.

10:39:51 10 QUESTION: So you said the next project was  
10:39:53 11 Deposit@Home?

10:39:53 12 ANSWER: Correct.

10:39:53 13 QUESTION: So you said, we would test. Did you  
10:39:56 14 personally partake in any of these testing efforts?

10:39:59 15 ANSWER: I did.

10:40:02 16 QUESTION: Okay. And do you recall what -- what  
10:40:04 17 types of devices you tested?

10:40:06 18 ANSWER: Me personally, probably just a number of  
10:40:10 19 different brands and types of -- of either flatbed or  
10:40:16 20 sheetfed scanners.

10:40:17 21 QUESTION: And in your role as project manager,  
10:40:22 22 did you ever experiment with any image capture devices that  
10:40:26 23 were not scanners?

10:40:27 24 ANSWER: I personally did not.

10:40:29 25 QUESTION: I'm going to hand you what I've marked

10:40:31 1 as Exhibit 1.

10:40:36 2 This is an email chain, looks like from 2006.

10:40:48 3 Have you seen this before?

10:40:49 4 ANSWER: Yes, I have.

10:40:49 5 QUESTION: And so you would have been able to see  
10:40:55 6 this email from Mr. Oakes at that time that you were  
10:41:00 7 included on the chain?

10:41:01 8 ANSWER: That is correct.

10:41:03 9 QUESTION: And he says: We processed the first  
10:41:07 10 check image captured by the use of a camera. Do you see  
10:41:12 11 that?

10:41:13 12 ANSWER: Yes.

10:41:13 13 QUESTION: Do you know of anyone at USAA  
10:41:15 14 experimenting with the use of a camera with the  
10:41:18 15 Deposit@Home service prior to October 25th, 2006?

10:41:34 16 ANSWER: I'm not aware specifically. I know we  
10:41:36 17 had had discussion about different types of image capture  
10:41:43 18 devices. I was not involved in any of the testing with any  
10:41:46 19 of those other devices. And I don't know what all was  
10:41:50 20 being done down in the innovation lab, as I was just  
10:41:54 21 focused on and only a part of the Deposit@Home piece.

10:41:59 22 QUESTION: When you say we had discussions, who is  
10:42:07 23 "we"?

10:42:10 24 ANSWER: Probably just sitting in a conference  
10:42:11 25 room with some of the -- the technical team and -- and some

10:42:14 1 of the innovation team, just talking about what else could  
10:42:19 2 be used and throwing ideas around. What other types of,  
10:42:26 3 you know, scanners have we not thought of? What other  
10:42:29 4 types of image capture devices?

10:42:34 5 I don't know if it was prior to this email. I  
10:42:36 6 remember the talk about could they use web cams and just  
10:42:39 7 hold the check up to a webcam and snap the image that way.  
10:42:45 8 I don't remember the timing of that, but I remember, you  
10:42:47 9 know, webcams coming up in the conversation.

10:42:48 10 QUESTION: When you say webcam, can you describe  
10:42:51 11 what you mean by webcam?

10:42:53 12 ANSWER: I would say back in the day, you know,  
10:42:58 13 webcams would sit on the top of a monitor, and, you know,  
10:43:02 14 could -- they hold up to that webcam that was plugged in,  
10:43:06 15 you know, with a USB cable to a computer.

10:43:12 16 QUESTION: And those would be devices that were  
10:43:14 17 separate from the computer?

10:43:16 18 ANSWER: I mean, it's plugged into it, but it  
10:43:19 19 wasn't a part of the computer.

10:43:32 20 QUESTION: You could take it off the computer?

10:43:32 21 ANSWER: Unplug it.

10:43:32 22 QUESTION: And then going on further in this  
10:43:38 23 email, it says: A member used his camera with a TWAIN  
10:43:42 24 driver to capture the image and process it through the  
10:43:45 25 Deposit@Home application. The image was processed

10:43:48 1 correctly.

10:43:49 2 Do you know what a TWAIN driver is?

10:43:51 3 ANSWER: That's the driver that gets the image  
10:43:58 4 from the device to the computer. I wouldn't be able to  
10:44:02 5 speak to it from a technical perspective, though.

10:44:05 6 QUESTION: So it gets the image from the separate  
10:44:09 7 image capture device over to the computer?

10:44:10 8 ANSWER: Correct.

10:44:13 9 QUESTION: Okay. So, earlier, I think you  
10:44:18 10 mentioned that you had overall knowledge of the banking  
10:44:26 11 industry and -- and some -- some knowledge of the check  
10:44:35 12 processing in the banking industry.

10:44:36 13 And that was sort of the expertise that you  
10:44:43 14 brought to the table when were a project manager working on  
10:44:48 15 Deposit@Home. Is that a fair characterization?

10:44:52 16 ANSWER: That's fair.

10:44:53 17 QUESTION: And that would have been in 2006 or so?

10:44:56 18 ANSWER: That's when I started work on  
10:45:00 19 Deposit@Home project, but all of the experience I had  
10:45:04 20 gotten with the check processing was prior to that.

10:45:06 21 QUESTION: Okay.

10:45:07 22 ANSWER: Yeah.

10:45:07 23 QUESTION: So -- so at that time, was receiving an  
10:45:13 24 account identification number a standard or conventional  
10:45:19 25 banking process?

10:45:20 1 ANSWER: When you say "receiving an account  
10:45:22 2 identification number," are you talking about just -- just  
10:45:24 3 the account number?

10:45:26 4 QUESTION: Sure.

10:45:28 5 ANSWER: I would say any time that you're going to  
10:45:32 6 make a deposit or any type of transaction, they would need  
10:45:37 7 to know what account that was going to be -- you would be  
10:45:41 8 interacting with at that time.

10:45:43 9 QUESTION: So is the answer yes?

10:45:51 10 ANSWER: I would -- I would say yes.

10:45:53 11 QUESTION: Okay. What about receiving a check  
10:45:58 12 amount indication, would that have been a standard or  
10:46:01 13 conventional banking process in 2006?

10:46:04 14 ANSWER: I would say it is a standard process, but  
10:46:09 15 how that's done would differ depending on the channel.

10:46:13 16 QUESTION: Okay. But -- but that's something that  
10:46:16 17 existed prior to remote deposit capture?

10:46:19 18 ANSWER: Receiving a deposit amount?

10:46:23 19 QUESTION: Receiving a check amount indication?

10:46:29 20 ANSWER: A check amount indication?

10:46:35 21 QUESTION: Yes.

10:46:36 22 ANSWER: Again, depending on channel, I would say  
10:46:38 23 if a teller was receiving it, they would get the indication  
10:46:42 24 visually by eyeing the check. So it -- it would differ  
10:46:45 25 depending on the channel.

10:46:46 1 QUESTION: But regardless of the channel or how it  
10:46:49 2 differed, the fact of receiving it existed?

10:46:52 3 ANSWER: Correct.

10:46:53 4 QUESTION: What about receiving check images?  
10:46:56 5 Was -- was that something that existed prior to remote  
10:46:59 6 deposit capture?

10:46:59 7 ANSWER: Receiving check images, I would say in a  
10:47:06 8 consumer banking environment didn't really exist prior to  
10:47:11 9 Deposit@Home because they would walk in and hand you a  
10:47:14 10 paper check and you weren't receiving an image.

10:47:17 11 QUESTION: What about optical character  
10:47:20 12 recognition, is that something that existed prior to remote  
10:47:27 13 deposit capture?

10:47:27 14 ANSWER: Within, I guess, the industry and not  
10:47:34 15 just banking, I guess optical character recognition as a  
10:47:37 16 technology existed. There was in the item processing  
10:47:43 17 process. And not knowing specifically, I would say there  
10:47:54 18 was some OCR done in the batch processing of items, but I  
10:48:00 19 wouldn't -- I wouldn't say specifically.

10:48:02 20 QUESTION: But at some point in the process,  
10:48:10 21 validation of the routing number occurred?

10:48:12 22 ANSWER: At some point in the process, yes.  
10:48:14 23 During the item processing process.

10:48:16 24 QUESTION: Even before remote deposit capture?

10:48:20 25 ANSWER: Yes.

10:48:20 1 QUESTION: And then, of course, check deposits  
10:48:23 2 could be initiated even before remote deposit capture  
10:48:26 3 existed, right?

10:48:28 4 ANSWER: Yes.

10:48:33 5 QUESTION: If there had been prior research at  
10:48:36 6 USAA about capturing check images with cameras or camera  
10:48:40 7 phones, who -- who would know about that?

10:48:42 8 ANSWER: Probably Bharat Prasad. Maybe Rey  
10:48:49 9 Medina. Chuck Oakes would probably know.

10:48:52 10 (Videoclip ends.)

10:48:56 11 THE COURT: Does that complete this witness by  
10:48:58 12 deposition?

10:48:59 13 MS. WILLIAMS: Yes, Your Honor.

10:49:00 14 THE COURT: Proceed with your next witness.

10:49:02 15 MS. WILLIAMS: Thank you, Your Honor. Defense  
10:49:03 16 calls Mr. Randy Morlen, another USAA inventor.

10:49:07 17 THE COURT: Proceed with the witness by  
10:49:08 18 deposition.

10:49:08 19 (Videoclip played.)

10:49:09 20 QUESTION: Good morning, Mr. Morlen. Can you  
10:49:16 21 please state your name for the jury?

10:49:17 22 ANSWER: Randy Ray Morlen.

10:49:20 23 QUESTION: And how -- how long were you in that  
10:49:22 24 role as a lead analyst in the Applied Research group?

10:49:25 25 ANSWER: From 2004 until, let me see -- so



10:49:30 1 probably until 2010 or '11, something like that.

10:49:41 2 QUESTION: When did you stop working at USAA?

10:49:43 3 ANSWER: Four years ago, so 2015 -- about August  
10:49:46 4 of 2015.

10:49:48 5 QUESTION: So in 2005, you looked around for  
10:49:52 6 solutions, you didn't find any. What did you do next?

10:49:57 7 ANSWER: When we -- so we -- I can't remember if  
10:50:02 8 we had a scanner or we went out and bought a scanner. We  
10:50:07 9 hooked it up -- we had a little lab environment, and we  
10:50:10 10 started doing development on being able to -- to scan a  
10:50:14 11 check and putting it into a format that was  
10:50:18 12 Check-21-compatible.

10:50:19 13 QUESTION: What type of scanner was this?

10:50:20 14 ANSWER: The cheapest one that we could find at  
10:50:24 15 Walmart at the time. I -- it might have been a Lexmark or  
10:50:27 16 something like that. I don't remember that specific.

10:50:29 17 QUESTION: This was a scanner that one might put  
10:50:32 18 in their home?

10:50:33 19 ANSWER: Correct.

10:50:34 20 QUESTION: And after you began experimenting with  
10:50:41 21 it, when -- strike that.

10:50:42 22 After you began experimenting with it, did you  
10:50:46 23 ever come up with a workable solution?

10:50:50 24 ANSWER: Yes.

10:50:52 25 QUESTION: When was that?

10:50:53 1 ANSWER: I would -- I don't know specifics. I  
10:50:56 2 would imagine 2000 -- it was also in 2005.

10:51:00 3 QUESTION: Did you ever start experimenting with  
10:51:03 4 any other devices in place of a general purpose home  
10:51:07 5 scanner?

10:51:07 6 ANSWER: Yes. We looked at any kind of  
10:51:12 7 TWAIN-compatible device. So we -- we had some regular  
10:51:16 8 digital cameras, if you will, non-filmed cameras. So we  
10:51:19 9 took some digital cameras. I believe we also had some flip  
10:51:26 10 phones that you could plug in that would -- that were TWAIN  
10:51:31 11 compatible. When you -- when you plugged them in, it would  
10:51:36 12 recognize it, you know, so you could pull the images off.  
10:51:38 13 So we looked at that.

10:51:39 14 I don't remember what kind of phones they were at  
10:51:41 15 the time.

10:51:41 16 QUESTION: Okay. So you mentioned you  
10:51:45 17 experimented with digital cameras and flip phones?

10:51:47 18 ANSWER: It was any -- and video cameras, like  
10:51:50 19 webcams.

10:51:50 20 QUESTION: Video cameras?

10:51:51 21 ANSWER: Any kind of device that you could plug in  
10:51:55 22 and could be controlled by TWAIN at the time.

10:51:57 23 QUESTION: When did you first -- first experiment  
10:52:02 24 with digital cameras?

10:52:03 25 ANSWER: It would have been after we successfully

10:52:07 1 scanned a check with a scanner, so it would have probably  
10:52:11 2 been late 2005 or early 2006, I'm guessing.

10:52:16 3 QUESTION: Now, all of this work that we've just  
10:52:19 4 been talking about, did it lead to the development of any  
10:52:23 5 product that USAA released?

10:52:24 6 ANSWER: It led to eventually Deposit@Home and  
10:52:29 7 then after that, Deposit@Mobile.

10:52:32 8 QUESTION: And you don't remember specifics as to  
10:52:35 9 when you first started experimenting with one type of  
10:52:38 10 device versus another device, you just know generally it  
10:52:41 11 was in --

10:52:42 12 ANSWER: Well, we definitely used flatbed scanner  
10:52:45 13 first, and then everything else after that.

10:52:47 14 QUESTION: Okay. Let's go back to the '227  
10:52:49 15 patent. I believe that was the first one I handed you.

10:52:54 16 Does this patent discuss at all the use of mobile  
10:53:01 17 devices for the remote deposit of checks?

10:53:04 18 ANSWER: Specifically, no. But generically with  
10:53:09 19 image capture device, yes.

10:53:09 20 QUESTION: And what do you mean by that?

10:53:11 21 ANSWER: It does not use the words "mobile  
10:53:13 22 device." It does -- generically, it is any image capture  
10:53:18 23 device, which is a mobile -- can be a mobile device.

10:53:22 24 Generically, it's an image -- it does reference  
10:53:26 25 image capture device. But, specifically, it does not say

10:53:31 1 a -- a mobile camera. Image capture device would be a  
10:53:33 2 mobile device -- or a mobile device would be an image  
10:53:37 3 capture device.

10:53:37 4 QUESTION: Looking at this patent as a whole, does  
10:53:40 5 it have any discussion of a device that includes -- a  
10:53:46 6 single device that includes both a camera and a processor?

10:53:50 7 ANSWER: Specifically, no. But any digital device  
10:53:58 8 has a camera -- any digital imaging device has a camera and  
10:54:02 9 a processor.

10:54:05 10 QUESTION: Let's go to Figure 2 of this patent.  
10:54:10 11 At the bottom of Figure 2, it's labeled 246, there is  
10:54:13 12 depicted an image capture device, correct?

10:54:15 13 ANSWER: Yes.

10:54:15 14 QUESTION: And it looks to me like that's a  
10:54:21 15 scanner. Would you agree with that?

10:54:23 16 ANSWER: The image for -- that they used for an  
10:54:25 17 image capture device does appear to be a flatbed scanner.

10:54:29 18 QUESTION: And that's separate and apart from a  
10:54:31 19 computer that is also depicted in Figure 2, right?

10:54:33 20 ANSWER: In this image, it does not show them as  
10:54:39 21 one device.

10:54:39 22 QUESTION: You see where it says, an image capture  
10:54:44 23 device may be communicatively coupled to the computer?

10:54:48 24 ANSWER: Yes.

10:54:48 25 QUESTION: Does this describe an image capture

10:54:53 1 device that is separate from a computer?

10:54:55 2 ANSWER: The example that they give shows them as  
10:55:00 3 being separate devices.

10:55:06 4 QUESTION: And you would agree that there's no  
10:55:08 5 discussion in this patent of an integrated computer and  
10:55:14 6 image capture device?

10:55:14 7 ANSWER: In the -- the examples they give, I do  
10:55:18 8 not see where it refers to that.

10:55:20 9 QUESTION: Earlier, you mentioned that in your  
10:55:24 10 role as a lead analyst in the Applied Research group, that  
10:55:31 11 you looked at various different solutions which would allow  
10:55:37 12 for USAA members to remotely deposit checks, in the 2005  
10:55:45 13 time frame, and that you didn't find any; is that fair?

10:55:50 14 ANSWER: Correct. Yeah, so I didn't look -- look  
10:55:52 15 at solutions. I looked for solutions, and there were no  
10:55:55 16 solutions at the time.

10:55:59 17 (Videoclip ends.)

10:55:59 18 THE COURT: Does that complete this witness?

10:56:01 19 MS. WILLIAMS: Yes, Your Honor. And it completes  
10:56:03 20 our witnesses by deposition at this time.

10:56:04 21 THE COURT: All right. Then Defendant, call your  
10:56:07 22 next witness.

10:56:08 23 MR. MELSHEIMER: May it please the Court, Your  
10:56:08 24 Honor.

10:56:10 25 We call at this time Dr. John Villasenor.

10:56:14 1 THE COURT: All right. Dr. Villasenor, if you'll  
10:56:17 2 come forward and be sworn by the courtroom deputy.

10:56:22 3 (Witness sworn.)

10:56:31 4 THE COURT: Please come around and have a seat on  
10:56:35 5 the witness stand, sir.

10:56:42 6 MR. MELSHEIMER: Your Honor, may I approach the  
10:56:44 7 Courtroom Security Officer and hand him a binder to provide  
10:56:50 8 the witness?

10:56:50 9 THE COURT: You may approach.

10:56:51 10 MR. MELSHEIMER: Your Honor, the binders have been  
10:56:53 11 provided to counsel.

10:56:54 12 THE COURT: All right. Then you may proceed with  
10:56:55 13 your direct examination, Mr. Melsheimer.

10:56:57 14 MR. MELSHEIMER: May it please the Court.

10:56:57 15 JOHN VILLASENOR, PH.D., DEFENDANT'S WITNESS, SWORN

10:56:57 16 DIRECT EXAMINATION

10:56:58 17 BY MR. MELSHEIMER:

10:56:58 18 Q. Good morning, sir.

10:57:01 19 A. Good morning, sir.

10:57:02 20 Q. Please introduce yourself to the jury.

10:57:04 21 A. My name is John Villasenor, and I am a professor at  
10:57:10 22 UCLA. I was born and raised in the Washington, D.C., area,  
10:57:16 23 but I've lived in California for quite a number of years.

10:57:19 24 And I've been married for a little over 20 years  
10:57:22 25 now, and I have a daughter who is recently gone off to

10:57:25 1 college and a son that's nearly finished with high school.

10:57:27 2 Q. Dr. Villasenor, what is your role in this case?

10:57:30 3 A. I was retained to act as an independent expert on the  
10:57:34 4 technical issues relating to infringement and to provide an  
10:57:37 5 opinion on -- on that.

10:57:38 6 Q. Did you prepare demonstratives to assist you in your  
10:57:41 7 testimony today?

10:57:42 8 A. Yes, sir, I did. And the first of them is on the  
10:57:45 9 screen now.

10:57:45 10 Q. All right. What is your current job or title?

10:57:47 11 A. So as I mentioned a moment ago, I'm on the faculty at  
10:57:52 12 UCLA, the University of California, Los Angeles. And I'm a  
10:57:55 13 professor in the electrical and computer engineering  
10:57:58 14 department.

10:57:58 15 Q. How long have you been a professor at UCLA?

10:58:00 16 A. Since 1992, so I guess that's about almost 28 years  
10:58:06 17 now.

10:58:06 18 Q. Do we have a slide summarizing your educational  
10:58:09 19 background, sir?

10:58:09 20 A. Yes, sir, we do.

10:58:11 21 Q. What is shown on this slide?

10:58:12 22 A. I earned a Ph.D. at Stanford University in 1989, and a  
10:58:20 23 Master's degree prior to that also at Stanford, and then  
10:58:22 24 earlier than that, I earned my undergraduate degree in  
10:58:26 25 electrical engineering at the University of Virginia.

10:58:29 1 Q. Are all those degrees in the field of electrical  
10:58:32 2 engineering?

10:58:32 3 A. Yes, sir, they are.

10:58:33 4 Q. Is that field also related to computers?

10:58:35 5 A. Yes, in fact, my department at UCLA is called the  
10:58:40 6 Department of Electrical and Computer Engineering.

10:58:42 7 Q. How old were you, sir, when you got your Ph.D.?

10:58:44 8 A. I was 24.

10:58:45 9 Q. How did you do that?

10:58:48 10 A. Well, I worked hard and did it pretty quickly.

10:58:50 11 Q. What was your first job after getting your Ph.D.?

10:58:53 12 A. My first job after getting a Ph.D. was I had a post doc  
10:59:04 13 for a little while and then I was -- I worked at NASA at  
10:59:06 14 the Jet Propulsion Laboratory, that's one of the NASA  
10:59:10 15 laboratories and it's in Pasadena, California.

10:59:12 16 Q. What kind of work did you do at NASA?

10:59:14 17 A. At NASA I was working on ways to get digital images of  
10:59:17 18 the earth from space, and then -- today that's not  
10:59:19 19 considered too impressive. You can go on Google and click  
10:59:22 20 on, you know, Google Maps and get images. But back then, a  
10:59:25 21 lot of those technologies were a lot less accessible.

10:59:28 22 Q. What did you do after your work at NASA?

10:59:31 23 A. So immediately after working at NASA, I joined the  
10:59:34 24 faculty at UCLA in the electrical engineering department.

10:59:38 25 Q. What other professional experience do you have that's



10:59:41 1 reflected on this slide?

10:59:42 2 A. This is just some examples. So over the years, I've  
10:59:46 3 done quite a bit of work funded by the United States  
10:59:49 4 Department of Defense. What I mean by funded by, that  
10:59:53 5 means that they will provide funding to, for example, UCLA  
10:59:57 6 or another institution I'm associated with, and I will  
11:00:02 7 direct and conduct some research that they believe is  
11:00:06 8 important.

11:00:06 9 Q. Outside of your work in the academic sector, have you  
11:00:10 10 also had some experience in the commercial sector?

11:00:12 11 A. I've -- I've consulted for quite a number of technology  
11:00:15 12 companies over the years. I've also had quite a lot of  
11:00:19 13 experience in what we call venture capital technology --  
11:00:25 14 venture capital, and that's looking at startup companies  
11:00:27 15 and deciding whether their proposals for new products and  
11:00:30 16 services are likely to be successful and what the market is  
11:00:32 17 and helping with those sorts of investment decisions.

11:00:36 18 Q. All told, Doctor, how long have you been working in the  
11:00:40 19 general field of imaging technology?

11:00:42 20 A. I would say I started that when I was still working on  
11:00:45 21 my Ph.D., so that's the mid-1980s. So really about a third  
11:00:50 22 of a century I've been working on those technologies and  
11:00:53 23 others.

11:00:53 24 Q. Do you teach courses in imaging technologies?

11:00:56 25 A. I created at UCLA the graduate-level course sequence in

11:01:02 1 digital image processing as well as the undergraduate  
11:01:06 2 course we have for undergraduates in image processing, and  
11:01:10 3 I've taught those courses multiple times.

11:01:12 4 Q. Have you ever testified before in a lawsuit?

11:01:14 5 A. I've testified in several legal matters in the past,  
11:01:16 6 yes.

11:01:17 7 Q. Have you ever testified outside of court?

11:01:19 8 A. Yes, I have.

11:01:20 9 Q. Where?

11:01:21 10 A. United States Congress.

11:01:23 11 Q. What did you testify to the United States Congress  
11:01:26 12 about?

11:01:26 13 A. I've been asked, I think it's about five times, to  
11:01:29 14 provide Congressional testimony. An example is on digital  
11:01:33 15 privacy, protecting privacy, given all the technology  
11:01:35 16 advances that -- that sometimes put privacy at risk.

11:01:39 17 Q. Are you an inventor on any of your own patents, sir?

11:01:42 18 A. Yes, sir, I am.

11:01:43 19 Q. How many?

11:01:43 20 A. I think I'm -- I think it's about 20 issued U.S.  
11:01:47 21 patents that I'm a named inventor on now.

11:01:49 22 Q. Have you ever worked on any technology related to  
11:01:52 23 banking?

11:01:52 24 A. Yes, sir, I have.

11:01:53 25 Q. What is that?

11:01:54 1 A. So, for example, at UCLA, I led a team where we  
11:01:58 2 developed an app for helping people in countries -- in  
11:02:04 3 developing countries where they don't have a formal banking  
11:02:07 4 system nearly as developed as we have here, but they have  
11:02:11 5 some phones and more often smartphones to helping them get  
11:02:15 6 access to the kinds of services that the countries like the  
11:02:17 7 United States would get through traditional banks.

11:02:19 8 Q. Are you being compensated for your time working on this  
11:02:22 9 case?

11:02:22 10 A. Yes, sir, I am.

11:02:23 11 Q. At what rate are you being compensated for the time  
11:02:26 12 you're putting into this case?

11:02:27 13 A. \$800.00 per hour.

11:02:29 14 Q. About how many hours do you think you've worked on this  
11:02:32 15 case approximately?

11:02:33 16 A. Somewhat over a hundred, although I don't have the  
11:02:37 17 exact number, sir.

11:02:37 18 Q. Did Wells Fargo hire you to arrive at a certain opinion  
11:02:41 19 or conclusion?

11:02:41 20 A. No, sir, they did not. They asked for my independent  
11:02:44 21 opinion.

11:02:44 22 Q. Does your rate or compensation change in any way based  
11:02:48 23 on what the jury ultimately decides?

11:02:51 24 A. Not in any way, no.

11:02:54 25 MR. MELSHEIMER: Your Honor, may it please the

11:02:56 1 Court. I tender Dr. Villaseñor as an expert in computer  
11:02:58 2 engineering and imaging technologies.

11:03:00 3 THE COURT: Is there objection?

11:03:01 4 MR. SHEASBY: No objection.

11:03:03 5 THE COURT: Without objection, the Court will  
11:03:05 6 recognize this witness as an expert in those designated  
11:03:08 7 fields.

11:03:08 8 You may continue, counsel.

11:03:10 9 MR. MELSHEIMER: May it please the Court.

11:03:11 10 We have our next slide, Mr. Bakale.

11:03:13 11 Q. (By Mr. Melsheimer) What is the date that USAA alleges  
11:03:17 12 its patents were invented?

11:03:19 13 A. My understanding is that the alleged date is October  
11:03:23 14 31st, 2006.

11:03:25 15 Q. Where do you get that date, sir?

11:03:26 16 A. Well, if you look on the -- it's not quite the front  
11:03:30 17 page, I think, but near the front of both patents, there is  
11:03:33 18 a claim made that that is the -- the priority date.

11:03:36 19 Q. Now, did you analyze whether the Plaintiff in this case  
11:03:40 20 is actually allowed to legally claim priority to 2006?

11:03:45 21 A. No, I was not asked to perform that work.

11:03:48 22 Q. Who did that work?

11:03:49 23 A. My understanding is that Mr. Saffici was -- was doing  
11:03:52 24 that.

11:03:52 25 Q. Were you here for Mr. Saffici's entire testimony?

11:03:55 1 A. Yes, sir, I was.

11:03:56 2 Q. Now, did you hear the discussion about your opinion  
11:04:02 3 about what it takes to -- to be a person of ordinary skill  
11:04:05 4 in the art of the technology involved in these patents?

11:04:08 5 A. Yes, I -- I did hear that.

11:04:10 6 Q. Do you think that your opinion was used in a fair way  
11:04:14 7 or a misleading way?

11:04:15 8 A. I do not believe it was used in a fair way.

11:04:18 9 Q. Why do you say that?

11:04:20 10 A. Well, as came out in the re -- redirect of -- of  
11:04:24 11 Mr. Saffici, I was very intentional to not only include an  
11:04:28 12 education option, whether someone who could be a person of  
11:04:32 13 ordinary skill in the art through formal college education,  
11:04:35 14 but I also said that more experience can compensate for  
11:04:39 15 less education, because in my own experience, including  
11:04:42 16 with people -- relatives of my own, I've seen that people  
11:04:46 17 can acquire extraordinary expertise without necessarily  
11:04:51 18 having a formal degree. And I think it's really important  
11:04:54 19 to respect that that is an equally valid path to obtaining  
11:04:59 20 expertise.

11:05:00 21 Q. Did you hear about Mr. Saffici's 53 years of banking  
11:05:03 22 experience?

11:05:03 23 A. Yes, I -- yeah, I did hear about that. Yes.

11:05:06 24 Q. Do you think he is at least a person of ordinary skill  
11:05:10 25 in the art in these patents?

11:05:11 1 A. Yes, I'm just -- what I -- from perspective -- in terms  
11:05:13 2 of experience and what I said, I was two years old when he  
11:05:17 3 started working in banking.

11:05:19 4 Q. Let's go back to what technology was like before 2006.

11:05:23 5 What were mobile phones like back in the early  
11:05:26 6 '90s when you started at UCLA?

11:05:28 7 A. In the early '90s, I didn't have a mobile phone because  
11:05:32 8 I wasn't, I guess, at the leading edge, but I knew about  
11:05:36 9 them. And they were big, and they didn't do very much.  
11:05:39 10 They allowed you to talk, but not usually much else. And  
11:05:43 11 they were slow, and they weren't very -- they aren't nearly  
11:05:46 12 what they are today.

11:05:47 13 Q. By 2006, what were mobile phones like?

11:05:49 14 A. Mobile phones had gotten a lot more advanced. They had  
11:05:52 15 better processing power, and they were smaller and more  
11:05:55 16 capable. And -- and by that time, of course, you -- you  
11:05:57 17 had -- it was routine for people to use mobile phones to  
11:06:00 18 access the Internet, which really didn't happen nearly as  
11:06:03 19 much in the early 1990s.

11:06:07 20 Q. We've heard some discussions of apps in this trial,  
11:06:09 21 sir. What were apps like in 2006?

11:06:11 22 A. There really wasn't much in the way of apps, and that's  
11:06:14 23 because -- I think some other people have testified, as  
11:06:18 24 well.

11:06:18 25 Apple launched their iPhone -- I think it was

11:06:22 1 2007 -- and I think they opened up their app system in  
11:06:26 2 2000 -- around then or 2008. And that was when they made  
11:06:29 3 it possible for a lot of people to -- other people who  
11:06:32 4 weren't at Apple to develop apps that could then be  
11:06:34 5 provided through Apple, and that created this huge growth  
11:06:39 6 in apps that we -- we still see today. But I think that's  
11:06:41 7 what really started the industry on the heading it is  
11:06:44 8 today.

11:06:45 9 Q. Generally speaking, Doctor, what do the patents in this  
11:06:47 10 case describe?

11:06:48 11 A. The patents -- the patents describe doing a check  
11:06:53 12 deposit where you have a general purpose computer that's  
11:06:55 13 connected to, for example, a scanner or a digital camera.

11:07:00 14 Q. All right, sir. At -- at a very high level, what are  
11:07:08 15 you here to tell the jury about with respect to  
11:07:10 16 infringement?

11:07:10 17 A. I'm here to provide my conclusions regarding the  
11:07:13 18 assertions of infringement that were made by the Plaintiff.

11:07:15 19 Q. How did you come to understand what law you should  
11:07:18 20 apply in reaching your infringement conclusions?

11:07:21 21 A. So I was -- I've been informed that while I'm a  
11:07:25 22 technical expert, not an attorney, in order to reach this  
11:07:30 23 conclusion, we have certain legal frameworks, certain legal  
11:07:34 24 standards that -- that -- that we must apply.

11:07:36 25 And so counsel for Wells Fargo has informed me of

11:07:39 1 those standards, and I've also done some other cases where  
11:07:41 2 I've been informed of -- of standards.

11:07:44 3 Q. When a lot -- when analyzing infringement, is it  
11:07:47 4 important for you as an expert to apply the correct legal  
11:07:51 5 standard?

11:07:52 6 A. Yes, sir, it is.

11:07:53 7 Q. Why is that important?

11:07:55 8 A. Well, because if -- if -- even if the technical  
11:07:58 9 analysis is correct, if you don't apply the correct legal  
11:08:00 10 standard, you might reach an incorrect conclusion.

11:08:04 11 Q. What legal standards did you apply in this case with  
11:08:07 12 regard to non-infringement?

11:08:09 13 A. Well, for example, I was told it's important to look at  
11:08:14 14 the claim constructions that are provided by the Court, and  
11:08:17 15 then to look at the claims more generally, of course,  
11:08:20 16 including those constructions. And then you compare each  
11:08:25 17 asserted claim to the accused product, and you see if all  
11:08:28 18 the elements are present. And if there's one or more  
11:08:32 19 elements that are not present, then -- then there's no  
11:08:35 20 infringement.

11:08:35 21 Q. If a claim has many elements and there is one element  
11:08:40 22 missing in the accused product, what does that mean for the  
11:08:44 23 infringement analysis?

11:08:46 24 A. Well, that means that there isn't infringement because  
11:08:48 25 all -- I've been instructed that all the elements must be



11:08:51 1 present.

11:08:54 2 Q. Did you consider the meaning of the patents as of 2006?

11:08:59 3 A. Yes, I did.

11:09:00 4 Q. Why is that important?

11:09:02 5 A. Well, I was told that the claim is that -- by USAA that

11:09:07 6 the priority date for these patents is fall -- October

11:09:10 7 2006. And patents, as I've been instructed, should be

11:09:13 8 interpreted through the eyes of a person of ordinary skill

11:09:17 9 at the -- at the priority date. And I was told that I

11:09:19 10 should use October 2006 as the priority date.

11:09:22 11 Q. Why is it important to look at 2006, as opposed to

11:09:28 12 2017, when the patents in this case were actually filed

11:09:31 13 with the Patent Office?

11:09:31 14 A. Well, it's very important because if you're not

11:09:35 15 attentive to that, you can end up using hindsight in a way

11:09:39 16 that's improper. The technology has changed, of course, a

11:09:41 17 lot since -- between 2006 and 2017. And so it's important

11:09:45 18 to put yourself in the frame of mind of somebody in 2006

11:09:49 19 without being -- having your mind sort of have in mind

11:09:54 20 things that happened in the decade after that.

11:09:56 21 Q. We have a -- one more slide -- an additional slide.

11:10:00 22 Was there also legal standard you applied for a

11:10:03 23 system claim in a patent that involved multiple actors or

11:10:07 24 entities?

11:10:08 25 A. Yes, and that's on this slide right here.

11:10:11 1 Q. And what is this legal standard that you applied in  
11:10:14 2 your understanding?

11:10:15 3 A. Yes. So I was informed that when there's a system  
11:10:20 4 claim, which all of the claims, my understanding in these  
11:10:22 5 patents are, and -- and it is allegedly infringed but that  
11:10:31 6 infringement involves multiple entities, that to show  
11:10:32 7 infringement, the Plaintiff must show that a single entity  
11:10:34 8 does one of or more than -- at least one of the four things  
11:10:38 9 that are listed there -- makes, sells, or offers to sell,  
11:10:42 10 imports, or uses. And there's a specific test for each one  
11:10:45 11 of those, and I'll mention those later.

11:10:47 12 Q. Did you apply these legal standards in your  
11:10:53 13 infringement analysis, sir?

11:10:54 14 A. Yes, sir, I did.

11:10:55 15 MR. MELSHEIMER: All right. We have another  
11:10:56 16 slide, Mr. Bakale.

11:10:58 17 Q. (By Mr. Melsheimer) Tell the jury what else you did to  
11:11:00 18 prepare your opinions in this case, using the legal  
11:11:02 19 standards you just told the jury about.

11:11:04 20 A. So, for example, of course, I reviewed the patents and  
11:11:10 21 their file histories. I looked at source code as -- as  
11:11:13 22 appropriate. I looked at -- I spoke with an engineer from  
11:11:16 23 a company called Mitek named Mr. Andrew Wood. I reviewed  
11:11:22 24 some of the deposition transcripts. Of course, I read the  
11:11:24 25 report from Dr. Conte. And I also read the report from

11:11:27 1 Mr. Calman. And then, of course, I considered and applied  
11:11:31 2 the constructions that were supplied by the Court for the  
11:11:34 3 claim terms.

11:11:36 4 MR. MELSHEIMER: If we might have the next slide,  
11:11:38 5 Mr. Bakale.

11:11:38 6 Q. (By Mr. Melsheimer) Did the Court construe any of the  
11:11:40 7 claim terms that you mentioned earlier?

11:11:43 8 A. Yes, the Court did, and they're shown here. I won't  
11:11:46 9 read them out loud unless you want me to, but they're shown  
11:11:50 10 here.

11:11:50 11 Q. Did you apply them?

11:11:51 12 A. Yes, sir, I did.

11:11:52 13 MR. MELSHEIMER: The next slide, Mr. Bakale.

11:11:54 14 Q. (By Mr. Melsheimer) Can you give the jury an overview  
11:12:02 15 of the conclusions you reached as to non-infringement?

11:12:02 16 A. So there's -- there's two overarching reasons. One is  
11:12:04 17 that there's a confirming step that's recited in the '681  
11:12:11 18 patent. And the requirements of that step are not  
11:12:14 19 satisfied. And as a result, I do not believe that the '681  
11:12:21 20 patent is infringed.

11:12:21 21 And, secondly -- and this second reason applies to  
11:12:24 22 both the '681 patent and the '605 patent. There's no proof  
11:12:28 23 that Wells Fargo or users make, sell, offer to sell,  
11:12:35 24 import, or use the invention according to the legal  
11:12:37 25 standard I just mentioned a moment ago.

11:12:39 1 Q. Well, let's into the '681 patent. Let's start with  
11:12:46 2 Claim 30.

11:12:47 3 Does Wells Fargo infringe Claim 30 of this patent  
11:12:50 4 based on your analysis, sir?

11:12:52 5 A. No, sir, it does not.

11:12:53 6 Q. Why not?

11:12:56 7 A. So what's shown on the screen here is Claim 30 is a  
11:12:59 8 pretty long claim. So what's shown here is -- is one of  
11:13:03 9 the -- it's actually kind of a combination of a few parts  
11:13:08 10 of that claim.

11:13:08 11 But if you look at the second line of the screen  
11:13:10 12 there starting with the word "confirming," everything from  
11:13:13 13 there on is -- is one of the elements or sub-elements of  
11:13:19 14 the -- of the claim. And the Wells Fargo system does not  
11:13:22 15 do what's required in that claim element.

11:13:26 16 Q. Is this the confirming step that I examined Dr. Conte  
11:13:32 17 about earlier in the trial?

11:13:33 18 A. For that claim, that's right. Yes.

11:13:34 19 Q. Confirming that the mobile check deposit can go forward  
11:13:38 20 after optical character recognition is performed on the  
11:13:41 21 check, and it continues?

11:13:44 22 A. That's right, yes, sir.

11:13:44 23 Q. What is optical character recognition?

11:13:49 24 A. So optical character recognition -- there's some other  
11:13:51 25 witnesses that have testified to that. That's when a

11:13:53 1 computer can look at an image on a piece of paper, for  
11:13:56 2 example, and it's got letters and numbers on it, and the  
11:13:59 3 computer can read that just like we do as people and say  
11:14:02 4 whether it's a -- whether it's a 1 or a 2 or an A or a B,  
11:14:06 5 and a computer can do that automatically. That's optical  
11:14:12 6 character recognition.

11:14:12 7 MR. MELSHEIMER: Let's move to the next slide,  
11:14:14 8 Mr. Bakale.

11:14:14 9 Q. (By Mr. Melsheimer) How do you know from reading the  
11:14:16 10 patent where the patent says this confirming step needs to  
11:14:22 11 occur in the system it describes?

11:14:23 12 A. So this is -- on the left, you see the entire claim.  
11:14:29 13 And as I mentioned, it's a long claim. So there's some  
11:14:33 14 things that are highlighted and also put over on the right  
11:14:35 15 of that slide.

11:14:35 16 And if you look on the lower right of the screen  
11:14:38 17 there, there's -- there's at least a portion of the  
11:14:41 18 confirming step, and it talks about optical character  
11:14:45 19 recognition --

11:14:46 20 THE COURT: Dr. Villasenor, could you slow down  
11:14:48 21 just a little bit?

11:14:48 22 THE WITNESS: Yes, Your Honor. I apologize.

11:14:49 23 THE COURT: Please do. Thank you.

11:14:54 24 A. So the -- the things in that confirming step have to be  
11:14:57 25 done and -- on the mobile device. And in the accused

11:15:01 1 system, for example, the optical character recognition to  
11:15:03 2 determine the amount of the check is not done on the mobile  
11:15:08 3 device.

11:15:08 4 Q. (By Mr. Melsheimer) When you say the accused system,  
11:15:12 5 is that the Wells Fargo system that's accused of  
11:15:13 6 infringement?

11:15:14 7 A. Yes, sir, it is.

11:15:14 8 Q. Now, what does Dr. Conte say is the -- the customer's  
11:15:21 9 mobile device in this claim?

11:15:22 10 A. So Dr. Conte points to the smartphone that's owned by  
11:15:26 11 the user.

11:15:27 12 Q. What does the claim require the mobile device to do in  
11:15:35 13 the confirming step laid out on this slide?

11:15:38 14 A. The claim requires that the mobile device performs  
11:15:41 15 optical character recognition of the amount on the check,  
11:15:44 16 and that -- and that's not what occurs.

11:15:46 17 Q. Are you getting that from the language of the claim  
11:15:48 18 that says: Causes the customer's mobile device to perform?

11:15:54 19 A. Among other things, yes.

11:15:56 20 Q. And then the confirming step is listed as one of the  
11:16:00 21 multiple steps listed in that claim, correct?

11:16:02 22 A. Yes, sir.

11:16:03 23 Q. In the Wells Fargo system, does the user's smartphone  
11:16:13 24 perform the confirming step?

11:16:15 25 A. Not as it's laid out in this claim.

11:16:18 1 Q. Why do you say that, sir?

11:16:19 2 MR. MELSHEIMER: Let's take a look at Slide -- the  
11:16:21 3 next slide.

11:16:22 4 A. So in the Wells Fargo system, the image is transmitted  
11:16:25 5 to the server, the computer at Wells Fargo, without any  
11:16:30 6 optical character recognition first having been performed  
11:16:32 7 to find the amount on the check. And it's only after the  
11:16:35 8 image arrives at the server, the Wells Fargo server, that  
11:16:40 9 then after that point, the -- the -- the OCR is performed  
11:16:44 10 and the amount on the check is read, but that's not  
11:16:47 11 happening on the mobile device.

11:16:48 12 Q. (By Mr. Melsheimer) What did Dr. Conte -- where did  
11:16:50 13 Dr. Conte say that this -- the functionality for this  
11:16:56 14 confirming limitation in the OCR occurs?

11:16:59 15 A. My recollection is that Dr. Conte also testified that  
11:17:05 16 the OCR of the amount occurs -- it is performed on the --  
11:17:09 17 on the server.

11:17:10 18 Q. Does Dr. Conte say that the OCR of the amount occurs on  
11:17:14 19 the smartphone or the server?

11:17:17 20 A. My recollection is that he -- he said it occurs on the  
11:17:20 21 server.

11:17:20 22 Q. Does performing OCR on the server, that's that -- those  
11:17:25 23 other computers in the system, separate from the mobile  
11:17:30 24 phone?

11:17:30 25 A. Yes, sir.

11:17:30 1 Q. Does performing OCR on the server meet or satisfy the  
11:17:36 2 confirming limitation in this claim?

11:17:37 3 A. No, I do not believe it does.

11:17:40 4 Q. What does that mean for your conclusion about Claim 30  
11:17:44 5 of the -- of the patent?

11:17:47 6 A. That means that there would be no infringement of  
11:17:50 7 Claim 30.

11:17:51 8 Q. But what if the Wells Fargo system does all those other  
11:17:55 9 elements?

11:17:55 10 A. That doesn't matter in the sense that, as I mentioned  
11:17:58 11 earlier, if there is any one element that isn't satisfied  
11:18:03 12 that there's no infringement.

11:18:05 13 MR. MELSHEIMER: Let's look at our next slide  
11:18:07 14 which has Claim 12.

11:18:08 15 Q. (By Mr. Melsheimer) Does Claim 12 have a similar  
11:18:10 16 confirming step to the claim we just looked at, sir?

11:18:14 17 A. Yes, sir, it does.

11:18:15 18 Q. Where is the confirming step required to happen in  
11:18:20 19 Claim 12 of the patent?

11:18:21 20 A. In the claim, it's required to happen at the mobile  
11:18:24 21 device.

11:18:24 22 Q. Is it one of the steps that's listed as happening on  
11:18:29 23 the mobile device in Claim 12?

11:18:31 24 A. Yes, sir.

11:18:32 25 Q. Now, were you here for Dr. Conte's testimony?



11:18:44 1 A. Yes, sir, I was.

11:18:45 2 Q. Did -- did you hear him talk a lot about the Wells  
11:18:48 3 Fargo system?

11:18:49 4 A. I did.

11:18:50 5 Q. Now, does the fact that the claim uses the word  
11:18:53 6 "system," does that mean that Wells Fargo infringes?

11:18:56 7 A. Not necessarily, no.

11:18:58 8 Q. Why do you say that?

11:18:59 9 A. Well, I think you have to look at the specifics of  
11:19:03 10 what -- what's in the claim language, and I think as I read  
11:19:05 11 it, the confirming step must occur on the -- on the mobile  
11:19:09 12 device in the claim.

11:19:11 13 MR. MELSHEIMER: Let's take a look at one of  
11:19:12 14 Dr. Conte's demonstratives, PDX-2.69.

11:19:17 15 Q. (By Mr. Melsheimer) Do you remember this being used in  
11:19:20 16 Dr. Conte's direct examination?

11:19:22 17 A. Yes, I do.

11:19:23 18 Q. And it -- it has the claim on the left?

11:19:26 19 A. Yes, sir.

11:19:26 20 Q. What's on the right?

11:19:28 21 A. Well, on the right is a picture of a smartphone or a  
11:19:31 22 phone, and above it, it says: Optical character  
11:19:35 23 recognition extracting text from digital image. And on the  
11:19:39 24 lower right, it says: The check amount.

11:19:41 25 Now, in fact, that extraction, that reading is --

11:19:45 1 is not performed on the mobile device. It's actually  
11:19:48 2 performed -- the reading of the \$5.00, for example, that's  
11:19:51 3 actually performed at the server, even though it's shown  
11:19:53 4 here on a picture on a phone.

11:19:56 5 MR. MELSHEIMER: Let's look at another one of  
11:19:57 6 Dr. Conte's demonstratives, PDX-2.73.

11:20:02 7 Q. (By Mr. Melsheimer) This is a slide. Do you remember  
11:20:06 8 this being used in his direct examination?

11:20:08 9 A. Yes, sir, I do.

11:20:09 10 Q. It says: App only displays confirmation page after  
11:20:15 11 deposit has been validated?

11:20:16 12 A. Yes, that's right.

11:20:17 13 Q. Is this the confirming step that we've been talking  
11:20:19 14 about, or is this confirming?

11:20:22 15 A. Well, this is informing the user that -- that a  
11:20:27 16 confirmation has been made. But if you look at the top of  
11:20:30 17 the slide, it's underlined, we load information from the  
11:20:33 18 server and use them to populate the form.

11:20:36 19 So the smartphone is getting that information  
11:20:37 20 actually from the server, whereas it's where all the action  
11:20:41 21 for doing the actual OCR is occurring.

11:20:44 22 Q. Does this claim element use the term confirming or  
11:20:48 23 validating?

11:20:49 24 A. It uses the term confirming.

11:20:52 25 Q. Are those the same things?

11:20:53 1 A. I focused on confirming.

11:20:58 2 Q. Where is all the work being done or the logic being  
11:21:02 3 done with respect to the confirming step?

11:21:05 4 A. It's the OCR reading the amount is -- at the server.

11:21:08 5 Q. And does -- did Dr. Conte testify that the logic to do  
11:21:12 6 that is all at the server?

11:21:14 7 A. I believe that's what I heard him say.

11:21:21 8 Q. Does every asserted claim of the '681 patent recite or  
11:21:27 9 require a confirming step like the ones you've described?

11:21:29 10 A. Yes, sir, it does.

11:21:30 11 Q. Including Dependent Claims 13, 14, 20, and 22?

11:21:35 12 A. Yes, sir.

11:21:36 13 Q. Where do all the claims require the confirming step to  
11:21:40 14 occur?

11:21:40 15 A. On the mobile device.

11:21:41 16 Q. Does Dr. Conte accuse anything differently for the  
11:21:49 17 confirming step in any of the different claims that are  
11:21:51 18 asserted in this case?

11:21:52 19 A. No, my recollection is that he does not, sir.

11:21:55 20 Q. What does he point to for every confirming step?

11:21:58 21 A. He points to the same thing.

11:21:59 22 Q. Which is what?

11:21:59 23 A. He points to the -- the -- he points to this  
11:22:02 24 confirmation that's shown on the screen here.

11:22:05 25 Q. On the cell phone?

11:22:07 1 A. Yes.

11:22:07 2 Q. What is your conclusion about whether Wells Fargo's  
11:22:11 3 system practices the confirming step of any claim of the  
11:22:14 4 '681 patent?

11:22:14 5 A. I conclude that Wells Fargo does not practice the  
11:22:17 6 confirming step of any of the asserted claims of the '681  
11:22:21 7 patent.

11:22:21 8 Q. So, in your opinion, does Wells Fargo infringe any  
11:22:24 9 claim of the '681?

11:22:24 10 A. No, sir.

11:22:25 11 Q. Okay. I want to move on to -- do you have other  
11:22:29 12 non-infringement positions in this case?

11:22:31 13 A. Yes, sir.

11:22:32 14 Q. Do you have a non-infringement opinion based on the  
11:22:44 15 notion of what's called divided infringement?

11:22:46 16 A. Yes, sir, I do.

11:22:48 17 Q. Okay. And which claims in the case does this concept  
11:22:52 18 apply to?

11:22:53 19 A. It applies to every single one of the asserted claims.

11:22:55 20 Q. Which of the asserted claims are so-called systems  
11:23:00 21 claims?

11:23:01 22 A. My understanding is all of them are.

11:23:03 23 Q. Do the asserted claims in this case involve multiple  
11:23:08 24 entities or parties to perform different steps?

11:23:10 25 A. Yes, as -- as USAA has accused Wells Fargo, yes.

11:23:16 1 Q. How do you know that? Give us an example.

11:23:17 2 A. Well, for example, the claims recite a mobile device or  
11:23:22 3 a portable device, and so this is an example of one of the  
11:23:26 4 claims, and you can see I've highlighted a portable device,  
11:23:30 5 and Dr. Conte has pointed to the user's smartphone as that  
11:23:35 6 device.

11:23:36 7 And that's -- and then the claim also recites  
11:23:38 8 another computer, remote from the portable device, and he  
11:23:42 9 has pointed to the Wells Fargo servers. So those are the  
11:23:47 10 user's device, the user's smartphone is, of course,  
11:23:50 11 distinct from the Wells Fargo's servers.

11:23:51 12 Q. Well, who owns the portable device?

11:23:53 13 A. Well, the user presumably owns the smartphone that  
11:23:58 14 Dr. Conte pointed to.

11:23:59 15 Q. Who owns and controls all those servers and computers  
11:24:02 16 in the Wells Fargo system?

11:24:03 17 A. Certainly not the -- not the consumer. Wells Fargo  
11:24:06 18 controls some of them.

11:24:07 19 Q. Can you remind the jury on the next slide, sir, what  
11:24:10 20 standard you applied for systems claims involving multiple  
11:24:14 21 entities?

11:24:15 22 A. So as I mentioned before, when a Plaintiff is -- well,  
11:24:20 23 as I've been instructed, when a Plaintiff is accusing  
11:24:24 24 infringement in a manner that involves multiple entities,  
11:24:28 25 the Plaintiff must show that a single entity does one of

11:24:32 1 those following four things -- or more, makes, sells, or  
11:24:35 2 offers to sell, imports or uses.

11:24:39 3 Q. If the jury were to conclude that the Wells Fargo's  
11:24:42 4 systems includes every element of the claims in these  
11:24:47 5 patents, based on your understanding, is that enough to  
11:24:49 6 show infringement?

11:24:50 7 A. Well, they would have to -- this -- this -- the  
11:24:54 8 requirements of this slide would -- would still need to be  
11:24:56 9 satisfied.

11:24:56 10 Q. Let's go through the type -- this type of infringement  
11:25:00 11 one-by-one.

11:25:01 12 Did -- did Dr. Conte show that Wells Fargo makes  
11:25:06 13 the invention in this case?

11:25:08 14 A. Well, no, he did not.

11:25:09 15 Q. What -- what -- what standard applies for making an  
11:25:13 16 invention?

11:25:13 17 A. Well, since he's accusing Wells Fargo of being the  
11:25:17 18 infringer, he would need to show that Wells Fargo makes the  
11:25:21 19 smartphone that he's accused of being part of the  
11:25:23 20 infringing system and then combines that smartphone --

11:25:29 21 MR. SHEASBY: Your Honor, I object. I move to  
11:25:30 22 strike. It's outside the scope of his report.

11:25:35 23 MR. MELSHEIMER: Your Honor, I believe this is in  
11:25:37 24 his report, but I can rephrase.

11:25:39 25 THE COURT: Rephrase.

11:25:40 1 MR. SHEASBY: And, Your Honor, just to be clear,  
11:25:43 2 will the Court strike that answer?

11:25:45 3 THE COURT: I'll strike that answer.

11:25:47 4 MR. SHEASBY: Thank you.

11:25:47 5 THE COURT: Counsel may rephrase.

11:25:49 6 Q. (By Mr. Melsheimer) What is your understanding of the  
11:25:51 7 legal standard for making a system?

11:25:57 8 A. The accused infringer must make it and combine all the  
11:26:03 9 claim elements.

11:26:04 10 Q. Does -- did -- did -- in your review of Dr. Conte's  
11:26:08 11 report, did he go through and make this analysis with  
11:26:10 12 respect to making?

11:26:12 13 A. I don't believe he asserted that Wells Fargo makes the  
11:26:15 14 smartphone.

11:26:16 15 MR. SHEASBY: Your Honor, I object. Can we  
11:26:19 16 approach?

11:26:20 17 THE COURT: Approach the bench.

11:26:21 18 (Bench conference.)

11:26:27 19 MR. SHEASBY: Your Honor, there is nothing in this  
11:26:29 20 man's report that says that you have to make a smartphone.

11:26:33 21 THE COURT: You're going to have to talk softer up  
11:26:34 22 here, counsel.

11:26:34 23 MR. SHEASBY: There's nothing in this man's report  
11:26:36 24 that says you have to make a smartphone to infringe this  
11:26:45 25 claim. All he says is you have to combine -- absolutely --

11:26:45 1 THE COURT: Speak into this.

11:26:46 2 MR. SHEASBY: It is absolutely inappropriate for  
11:26:48 3 him to be suggesting to this jury that you have to make a  
11:26:51 4 smartphone to infringe this claim. It's an undisclosed  
11:26:55 5 point, and I would like a curative instruction for the jury  
11:26:58 6 to ignore any discussion --

11:26:58 7 THE COURT: All right. All right. What's your  
11:26:59 8 response?

11:26:59 9 MR. MELSHEIMER: Your Honor, my response is as  
11:27:01 10 follows.

11:27:03 11 THE COURT: Why don't you find the page and quit  
11:27:05 12 turning before you respond?

11:27:11 13 MR. MELSHEIMER: Your Honor, may I hand the Court  
11:27:16 14 this page of Dr. Villasenor's report? It's Paragraph 161.

11:27:41 15 THE COURT: All right.

11:28:05 16 MR. SHEASBY: There's nothing in his report that  
11:28:07 17 says you have to make a cell phone to infringe this claim.  
11:28:10 18 That's exactly what he told the jury. You have to make the  
11:28:13 19 cell phone to infringe the claim.

11:28:14 20 MR. MELSHEIMER: I think he said that Wells  
11:28:16 21 Fargo -- if they want me to clarify that -- but there's  
11:28:19 22 really no dispute that Wells Fargo doesn't make the user's  
11:28:23 23 cell phone, Your Honor. And so the point being if you want  
11:28:26 24 me to clarify it, does Wells Fargo make the cell phone in  
11:28:29 25 this case? No.



11:28:30 1 I don't -- I don't know why we're arguing.

11:28:33 2 MR. SHEASBY: Your Honor, it is absolutely  
11:28:35 3 irrelevant who makes the cell phone. This is highly  
11:28:38 4 prejudicial, and the jury should be instructed to ignore  
11:28:41 5 that. There's not any law that says you have to make a  
11:28:44 6 piece of an element, you have to combine them together.  
11:28:44 7 The idea of making a cell phone, which has now come out  
11:28:46 8 twice -- and I believe it's come out intentionally by this  
11:28:49 9 witness. It's highly prejudicial and not disclosed in his  
11:28:52 10 report.

11:28:55 11 MR. MELSHEIMER: Your Honor, that's one of the --  
11:28:57 12 that's one of the ways you can show infringement is making,  
11:29:02 13 and they do not make the accused system. They don't make  
11:29:05 14 the cell phone. They don't combine all the elements. So I  
11:29:09 15 don't -- I don't -- I think it's disclosed in his report,  
11:29:13 16 and it's proper under the law.

11:29:14 17 MR. SHEASBY: It is not the law that you have to  
11:29:17 18 make a component to make a system. That is undisclosed  
11:29:21 19 non-infringement defense. It's never been disclosed in  
11:29:23 20 this case, ever. And it should not happen. It was done  
11:29:26 21 intentionally in this examination.

11:29:28 22 MR. MELSHEIMER: Your Honor, there's no -- nothing  
11:29:30 23 done intentionally, other than try to draw out what the  
11:29:34 24 legal standards he implies are, Your Honor. I believe it's  
11:29:37 25 disclosed in his report. And we're -- no one is

11:29:40 1 disputing about the --

11:29:41 2 THE COURT: All right. It's 11:30. I'm going to  
11:29:43 3 send the jury to lunch, and then we'll get to the bottom of  
11:29:46 4 this.

11:29:46 5 MR. MELSHEIMER: Okay. Thank you.

11:29:47 6 THE COURT: Okay.

11:29:48 7 (Bench conference concluded.)

11:29:53 8 THE COURT: Ladies and gentlemen of the jury, I  
11:29:54 9 need to finish this discussion with counsel outside your  
11:29:57 10 presence. It's 11:30.

11:29:59 11 If your lunch is not there, it will be shortly in  
11:30:02 12 the jury room. So we're going to recess for lunch at this  
11:30:04 13 time.

11:30:05 14 If you'll take your notebooks with you to the jury  
11:30:08 15 room. Follow all the instructions I've given you,  
11:30:11 16 including not to discuss the case with each other. And  
11:30:14 17 we'll try to reconvene approximately 12:30.

11:30:18 18 With that, the jury is excused for lunch.

11:30:20 19 COURT SECURITY OFFICER: All rise.

11:30:40 20 (Jury out.)

11:30:43 21 THE COURT: Be seated, please.

11:30:44 22 All right. Let me hear your argument one more  
11:31:34 23 time, Mr. Sheasby. From the podium, please.

11:31:45 24 MR. SHEASBY: Yes, Your Honor.

11:31:45 25 THE COURT: I've briefly reviewed the testimony

11:31:47 1 that's at issue.

11:31:48 2 MR. SHEASBY: Dr. Villasenor opined in his report  
11:31:51 3 that because the system involves a user's cell phone as  
11:31:54 4 part of the system, it's not infringing. And he's  
11:31:57 5 perfectly welcome to make that argument.

11:31:59 6 But the idea that you have to make each element of  
11:32:02 7 a claim to make the system is just not the law. In fact,  
11:32:08 8 in CENTRAK versus Sonitor Technologies, 915 F.3d 1360, a  
11:32:13 9 final assembler can be liable for making infringing com --  
11:32:17 10 combination even if it does not meet each individual  
11:32:22 11 component element.

11:32:23 12 What they're trying to do through Villa --  
11:32:25 13 Dr. Villasenor is, one, not in his report. He never argued  
11:32:25 14 that you have to make individual elements to infringe a  
11:32:25 15 claim.

11:32:29 16 And, two, it violates black letter law. The  
11:32:33 17 suggestion that Dr. Villasenor has made twice on the stand  
11:32:38 18 in -- in -- in reference to this, I believe, was -- I'm  
11:32:41 19 very troubled by it, Your Honor. I'm not going to --

11:32:43 20 THE COURT: All right. Let me hear a response.

11:32:45 21 MR. SHEASBY: I'll stop there.

11:32:47 22 THE COURT: Let me hear a response from  
11:32:48 23 Mr. Melsheimer.

11:32:48 24 MR. MELSHEIMER: Your Honor, I believe what is  
11:32:50 25 disclosed in his report is what was asked of him. If I

11:32:54 1 need to clarify it in some way, I'm happy to do that. The  
11:32:59 2 question is, we're going to go through each one of these  
11:33:02 3 steps, and one of them is making --

11:33:04 4 THE COURT: Take the section of the witness's  
11:33:05 5 report that you showed me at the bench and put it on the  
11:33:08 6 overhead projector, please, since I don't have a copy here  
11:33:12 7 in front of me.

11:33:14 8 MR. MELSHEIMER: He does not -- so the disclosure  
11:33:25 9 is that -- he's saying what Dr. Conte did not do. Does not  
11:33:29 10 show that Wells Fargo infringes by making the accused  
11:33:32 11 system. Wells Fargo plainly does not combine all the  
11:33:35 12 elements because its users, not Wells Fargo, provide the  
11:33:42 13 smartphone accused as the remote device.

11:33:43 14 THE COURT: All right. Well, providing the  
11:33:45 15 smartphone is not making the smartphone. And the law is  
11:33:47 16 pretty clear, as I see it, that a final assembler can be  
11:33:56 17 liable for making an infringing combination, even if he  
11:33:59 18 does not make each individual component element. I think  
11:34:03 19 that's the CENTRAK holding, relying on Cross Medical and  
11:34:08 20 Lifetime.

11:34:08 21 The witness clearly told the jury in the testimony  
11:34:12 22 I reviewed that the Defendant -- it doesn't infringe  
11:34:19 23 because it does not make the cell phone. Didn't say  
11:34:22 24 because it failed to combine the cell phone with the other  
11:34:26 25 elements. It clearly uses the verb "did not make." So I'm

11:34:33 1 going to sustain the objection.

11:34:34 2 Mr. Johnston, check with the jury. If they're not  
11:34:39 3 eating lunch, and I don't think it's been delivered yet,  
11:34:39 4 bring them back in the courtroom, and I'm going to instruct  
11:34:39 5 them right now.

11:34:42 6 COURT SECURITY OFFICER: It's been delivered.

11:34:43 7 THE COURT: It's been delivered?

11:34:43 8 COURT SECURITY OFFICER: Yes, sir.

11:34:43 9 THE COURT: Well, tell them to put their forks  
11:34:46 10 down and come back in the courtroom.

11:34:48 11 Have a seat, counsel.

11:36:44 12 COURT SECURITY OFFICER: All rise.

11:36:45 13 (Jury in.)

11:36:46 14 THE COURT: Please be seated.

11:36:50 15 I apologize, ladies and gentlemen. Only a Federal  
11:36:56 16 Judge would have the temerity to interrupt eight people as  
11:37:04 17 they're starting their lunch, but I wanted to correct this  
11:37:04 18 before we went through the entire lunch break.

11:37:04 19 During the testimony with Dr. Villasenor just a  
11:37:09 20 moment ago, he was asked: What standard applies for making  
11:37:13 21 an invention?

11:37:15 22 And his answer was: Well, since he's accusing  
11:37:18 23 Wells Fargo of being the infringer, he would need to show  
11:37:21 24 that Wells Fargo makes the smartphone that he's accused of  
11:37:26 25 being part of the infringing system and then combines that

11:37:29 1 smartphone.

11:37:30 2 That's an incorrect statement, and it's counter to  
11:37:36 3 the law. I have sustained the Plaintiff's objection. And  
11:37:40 4 there is no requirement that Wells Fargo must make the  
11:37:46 5 smartphone.

11:37:48 6 They must combine all the elements in the claims  
11:37:51 7 to achieve the claimed system. But they do not have to  
11:37:55 8 manufacture each item that is combined as called for in the  
11:38:01 9 claims. It's the combination or a lack of combination  
11:38:04 10 that's required, not the actual manufacturing of the  
11:38:09 11 smartphone by Wells Fargo.

11:38:11 12 That was an improper -- it's improper testimony,  
11:38:14 13 and so I am instructing you to strike that from your  
11:38:17 14 memories and disregard that question and that answer or  
11:38:21 15 anything of a similar type.

11:38:24 16 All right. With that, I will allow you to resume  
11:38:27 17 your lunch. Thank you for your patience and understanding.  
11:38:31 18 The jury is excused for lunch break.

11:38:39 19 COURT SECURITY OFFICER: All rise.

11:38:40 20 (Jury out.)

11:38:42 21 THE COURT: All right. Given that the jury is out  
11:38:49 22 of the courtroom, we will recess for lunch and reconvene at  
11:38:53 23 or near 12:30.

11:38:55 24 MR. MELSHEIMER: Thank you, Your Honor.

11:38:55 25 THE COURT: The Court stands in recess.

11:38:57 1 MR. SHEASBY: Thank you, Your Honor.

11:38:58 2 COURT SECURITY OFFICER: All rise.

11:39:00 3 (Recess.)

4

5

CERTIFICATION

6

7

8

9

10

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

11

12

13

/S/ Shelly Holmes  
SHELLY HOLMES, CSR, TCRR  
OFFICIAL REPORTER  
State of Texas No.: 7804  
Expiration Date: 12/31/20

1/9/2020  
Date

14

15

16

17

18

19

20

21

22

23

24

25